TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 127.

THE SECURITY LAND AND EXPLORATION COMPANY, PLAINTIFF IN ERROR,

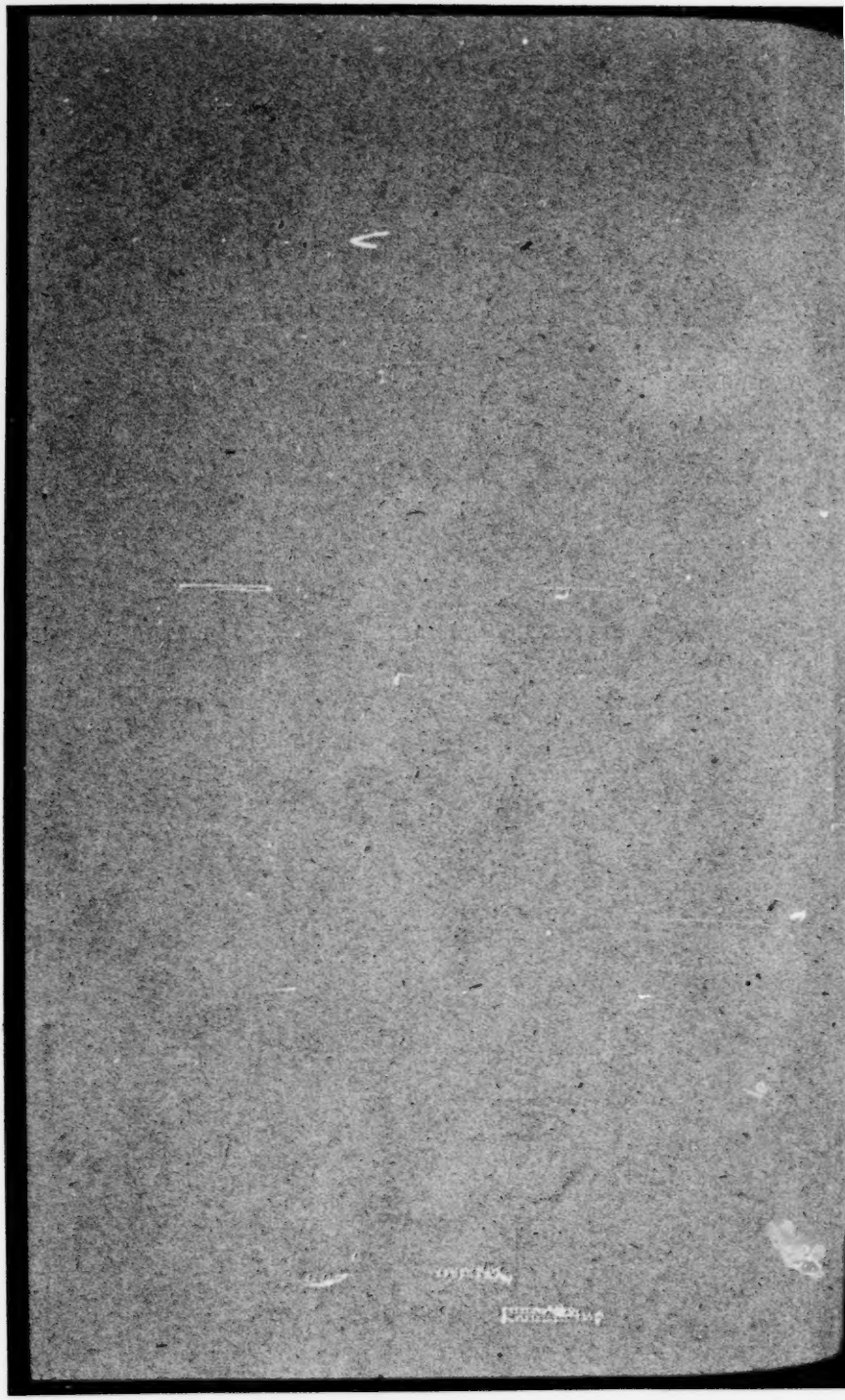
vs.

G. A. BURNS AND MARY L. BURNS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED SEPTEMBER 6, 1902.

(18,659.)



(18,659.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 127.

THE SECURITY LAND AND EXPLORATION COMPANY, PLAINTIFF IN ERROR,

vs.

G. A. BURNS AND MARY L. BURNS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

	Original.	Print.
Petition for writ of error	*a*	1
Waiver of bond	*b*	1
Order allowing writ of error	*c*	2
Writ of error	*e*	2
Citation	*h*	3
Acceptance of service of citation	*i*	3
Assignment of errors	*j*	4
Stipulation to substitute attorneys	*n*	5
Stipulation as to records on appeal, &c	*p*	6
Assignment of errors	*s*	7
Transcript from district court of St. Louis county	1	8
Complaint in Burns case	1	8
Answer in Burns case	2	9
Reply in Burns case	4	10
Complaint in Weckey case	5	10
Answer in Weckey case	6	11
Reply in Weckey case	7	11
Settled case	8	12
Stipulation to try two cases together	8	12
Stipulation of facts	9	12
Plaintiff's offers	17	16
Defendants' offers	18	17
Plaintiff's further offer	20	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 31, 1903.

	Original.	Print
Defendants' further offer	20	18
Admissions, &c	21	18
Amendment of statement	23	19
Stipulation as to statement	23	19
Judge's certificate of case	24	20
Exhibit C—Field notes	24	20
D—Certified copies of papers from General Land Office	62	45
Commissioner's certificate	62	45
Letter of Surveyor General Stewart to Commissioner, April 18, 1879	63	45
Letter of Surveyor General Stewart to Commissioner, June 2, 1879	64	46
Affidavit of John McGuire	65	46
Letter, Pressnell to Stewart, May 5, 1879	67	47
Letter, Pressnell to Stewart, May 31, 1879	68	48
Letter, Commissioner to Stewart, June 11, 1879	69	48
Defendants' Exhibit 1—Certified copy of papers from General Land Office	70	49
Commissioner's certificate	70	49
Letter, Secretary to Commissioner, January 19, 1895	71	49
Defendant's Exhibit 2—Certified copy of paper from General Land Office	78	53
Commissioner's certificate	78	53
Letter, Commissioner to surveyor general, October 31, 1895	79	54
Acceptance of service of proposed case	82	55
Findings of fact	83	56
Conclusions of law	92	61
Opinion	93	61
Notice of motion to amend findings	114	72
Stipulation as to motion to amend findings	115	72
Motion to amend findings	115	73
Exhibit A—Diagram	116*a*	73
B—Diagram	116*b*	73
Order amending findings	119	75
Judgment in Burns case	122	76
Judgment in Weckey case	123	77
Notice of appeal in Burns case	125	78
Notice of appeal in Weckey case	126	79
Waiver of bond	127	79
Endorsement on record on appeal	128	79
Syllabus	129	80
Opinion	130	80
Judgment	147	88
Order for judgment	149	89
Minute entry of argument	151	90
Clerk's certificate	154	91

a To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

The petition of Security Land & Exploration Company respectfully represents, that it is a corporation duly organized and doing business under the laws of the State of Minnesota; that on or about the 22nd. day of April A. D. 1902, there was entered in and by the supreme court of the State of Minnesota, the same being the highest court of said State, a final judgment in a certain case therein pending between the said Security Land & Exploration Company, appellant, in the supreme court of Minnesota, (plaintiff in the district court, the court of original jurisdiction in said State), and G. A. Burns and Mary L. Burns, respondents in said supreme court of Minnesota, and defendants in the said State district court, said judgment being in favor of the said respondents, and in affirmance of a judgment previously rendered by said State district court in their favor. That in said judgment of said supreme court of Minnesota, and in the proceedings had prior thereto in said cause, certain errors were committed to the prejudice of this plaintiff, (appellant in said supreme court), all of which will more fully appear from the assignment of errors herewith submitted and filed, and from the certified transcript of the record in said cause herewith submitted. That in said cause a title and right was and is claimed by your petitioner under a statute of the United States, and by virtue of a commission held and authority exercised under the United States, and the decision and judgment in said cause is against the said title and right specifically set up and claimed by your petitioner under the said statute, commission and authority.

Therefore this plaintiff (appellant in said supreme court of Minnesota) prays that a writ of error may issue in this behalf to the said supreme court of the State of Minnesota for the correction of the errors so complained of, and that a transcript of the record,
b proceedings and papers in this cause duly authenticated, may be sent to the said Supreme Court of the United States.

BILLSON & CONGDON,
Attorneys for Appellant.

August 8th, 1902.

In the event of the allowance of the foregoing petition, bond on appeal is hereby waived, and it is stipulated that the writ of error in said cause, if issued, shall have like effect as though a supersedeas bond had been filed.

August 7th, 1902.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Att'ys for Respondent.

c Supreme Court of the United States.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff in Error,
vs.
G. A. BURNS and MARY L. BURNS, Defendants in Error.

On reading the foregoing petition for writ of error and the stipulation thereto annexed and the assignment of errors and transcript of the record therewith submitted, the said writ is hereby allowed, supersedeas bond having been waived by the said stipulation.

Dated August 8th, 1902.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

d [Endorsed:] 12912 Security Land and Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Application for allowance of writ of error and stipulation waiving supersedeas bond. Filed August 9th, 1902 D. F. Reese clerk.

e THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota before you or some of you, being the highest court of the said State in which a decision could be had in the said suit between The Security Land & Exploration Company, plaintiff, (appellant in said supreme court of Minnesota), and G. A. Burns and Mary L. Burns, defendants, (respondents in said supreme court of Minnesota), wherein was drawn in question the construction of a clause of a statute or commission held or authority exercised under the United States, and the decision was against a title and right specially set up and claimed by the said Security Land & Exploration Company under the said statute, commission and authority, a manifest error hath happened to the great damage of the said Security Land & Exploration Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth (6) day of September A. D. 1902, in the said Supreme Court to be then and there held, that, the

record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of
f the said Supreme Court the ninth (9th) day of August, in the year of our Lord nineteen hundred and two.

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

Allowed by

CHAS. M. START,
Chief Justice.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

g [Endorsed:] 12912. Supreme Court of the United States. Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns, defendants in error. Writ of error.

h The Supreme Court of the United States to G. A. Burns and Mary L. Burns, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, on the 6th day of September next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Security Land & Exploration Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 8th day of August, in the year of our Lord nineteen hundred and two.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

i [Endorsed:] Original Supreme Court of the United States. Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns, defendants in error. Citation. Personal service of the within citation this 12th day of August 1902 is hereby admitted at Duluth, Minnesota, on behalf of the defendants in error. Wilson & Van Derlip and R. R. Briggs attorneys for defendants in error.

j Supreme Court of the State of Minnesota.

SECURITY LAND & EXPLORATION COMPANY, Appellants,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

Assignment of Errors.

The appellant in this action (plaintiff in the district court) in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the hearing of said cause in this court, to-wit:—

The court erred in rendering judgment affirming the judgment herein by the district court of the eleventh judicial district of the State of Minnesota in favor of the defendants in said district court (respondents here), and in adjudging that said respondents recover of said appellants their costs and disbursements, whereas the judgment of said district court should have been reversed on account of the following errors occurring upon the trial of said cause in said district court, viz.:

(1.) In overruling the plaintiff's objection to that part of the second paragraph of the stipulation commencing with the words "but no evidence has ever been found," as incompetent, irrelevant and immaterial, and as not admissible under the pleadings. (Printed Record, fols. 53–54.)

(2.) In overruling the plaintiff's objections to that portion of paragraph 3 of the stipulation which had not been offered by the plaintiff, commencing with the words "there is no evidence that," as incompetent, irrelevant, immaterial and not admissible under the pleadings. (Fol. 54.)

(3.) In overruling the plaintiff's objections to the 5th numbered paragraph of the stipulation as incompetent, irrerevant, immaterial and inadmissible under the pleadings. (Fol. 55.)

k (4.) In overruling the plaintiff's objections to the 6th paragraph of the stipulation, as being incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 56.)

(5.) In overruling the plaintiff's objections upon the same grounds, to the 12th paragraph of the stipulation. (Fol. 57.)

(6.) In overruling the plaintiff's objections, upon the same grounds, to the certified copy of the decision of the Secretary of the Interior of January 19, 1895. (Fols. 59–60.)

(7.) In overruling the plaintiff's objections, upon the same grounds, to the copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, directing the surveyor general to make a contract for the survey of these lands. (Fols. 60–61.)

(8.) In overruling the plaintiff's objections, upon the same grounds, to the stipulation or admission, that pursuant to the directions of the Secretary of the Interior a hearing was had before the surveyor

general of Minnesota, of which hearing the plaintiff had notice and at which it appeared by counsel and objected to the hearing for want of jurisdiction in the General Land Office, and that plaintiff took no further part in that hearing, and that the plaintiff had notice of the further proceedings leading up to the order for the survey shown in Defendant's Exhibit "2." (Fols. 61–63.)

(9.) In finding that the side lines of lot one extended southerly to Ely lake would appropriate substantially all the frontage of said lake within said section. (Fols. 266–267.)

(10.) In finding that if the side lines of lot 7 were extended easterly only a few feet of lake frontage would be contained in said lot. (Fols. 271–272.)

(11.) In its conclusion of law that the pretended meander line of Ely or Cedar Island lake as the same is described in the purported field notes, and as delineated upon the Government plat is the boundary line of the land owned by plaintiff in lots 3, 5, 6 and 7 in section 4, [illegible]nship 57, range 17. (Fols. 275–276.)

(12.) In its conclusion of law that the defendants are not in possession of any part of the land in said section four belonging to the plaintiffs and do not withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled. (Fol. 276.)

(13.) In its conclusion of law that the defendants are entitled to judgment, that plaintiff take [illegible]othing in said action, and for their costs and disbursements. (Fol. 277.)

August 8th, 1902.

BILLSON & CONGDON,
Attorneys for Appellants.

[Endorsed:] 12912. Supreme court. State of Minnesota. Security Land & Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Assignment of errors. Filed August 9, 1902. D. F. Reese clerk.

Supreme Court, State of Minnesota, April Term, 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

It is stipulated in the above entitled cause that Messrs. Billson, Congdon & Dickinson may be and are substituted as attorneys of record for the appellant in the above entitled cause.

Dated March 6th, 1902.

JOHN G. WILLIAMS &
BILLSON, CONGDON & DICKINSON,
Attorney- for Appellant.
WILSON & VAN DERLIP AND
R. R. BRIGGS, *Attorneys for Respondents.*
BILLSON, CONGDON & DICKINSON,
Substituted Attorneys for Appellant.

o (Endorsement:) 12912 Supreme court State of Minnesota Security Land & Exploration Company appellant *vs.* G. A. Burns *et al.*, respondents. Stipulation Filed Mar. 8 1902 Darius F. Reese, clerk.

p *Stipulation.*

STATE OF MINNESOTA:

In Supreme Court.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE S. WECKEY, Respondents.

Whereas an appeal is taken concurrently in both the above named cases; and

Whereas the settled case, the findings of fact and conclusions of law and memorandum of the court, the motion to amend the findings and the order amending the same are the same in both cases;

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the settled case, the findings of fact and conclusions of law and memorandum, motion to amend findings and order amending findings, in the return in the case of Security Land and Exploration Company *vs.* G. A. Burns *et al.*, may, for the purposes of this appeal, be considered as
q the settled case, findings of fact and conclusions of law and memorandum of the court, motion to amend findings and the order amending the findings in the case of Security Land and Exploration Company *vs.* Henry Weckey *et al.*, and they are by reference hereby made a part of the return in said last named case with the same force and effect as if they were embodied in the return in said case.

And it is further stipulated and agreed that the printed paper book and the briefs in the said Burns case shall serve as the printed paper book in the said Weckey case, and that both said cases may be argued orally together as one case.

Dated at Duluth, Minn., this 1 day of March, 1902.

BILLSON, CONGDON & DICKINSON &
JOHN G. WILLIAMS,
Attorneys for Appellant.
WILSON & VAN DERLIP,
R. R. BRIGGS, *Attorneys for Respondents.*

r (Endorsement:) 12912–12913 Supreme court State of Minnesota Security Land and Exploration Company, appellant, *vs.* G. A. Burns *et ux.*, respondents Security Land and Exploration Company appellant *vs.* Henry Weckey *et ux.*, respondents Stipulation. Filed Mar. 5 1902 Darius F. Reese, clerk John G. Williams attorney for — suite 607 First National Bank building Duluth, Minn.

s *Assignments of Error.*

The court below erred:—

(1.) In overruling the plaintiff's objection to that part of the second paragraph of the stipulation commencing with the words "but no evidence has ever been found," as incompetent, irrelevant and immaterial and as not admissible under the pleadings. (Fols. 53–54.)

(2.) In overruling the plaintiff's objections to that portion of paragraph 3 of the stipulation which had not been offered by the plaintiff, commencing with the words "there is no evidence that," as incompetent, irrelevant immaterial and not admissible under the pleadings. (Fol. 54.)

(3.) In overruling the plaintiff's objections to the 5th numbered paragraph of the stipulation as incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 55.)

(4.) In overruling the plaintiff's objections to the 6th paragraph of the stipulation, as being incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 56.)

t (5.) In overruling the plaintiff's objections, upon the same grounds, to the 12th paragraph of the stipulation. (Fol. 57.)

(6.) In overruling the plaintiff's objections, upon the same grounds to the certified copy of the decision of the Secretary of the Interior of January 19, 1895. (Fols. 59–60.)

(7.) In overruling the plaintiff's objections, upon the same grounds, to the copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, directing the surveyor general to make a contract for the survey of these lands. (Fols. 60–61.)

(8.) In overruling the plaintiff's objections, upon the same grounds, to the stipulation or admission, that pursuant to the directions of the Secretary of the Interior a hearing was had before the surveyor general of Minnesota, of which hearing the plaintiff had notice and at which it appeared by counsel and objected to the hearing for want of jurisdiction in the G-neral Land Office, and that plaintiff took no further part in that hearing, and that the plaintiff had notice of the further proceedings leading up to the order for the survey shown in Defendants' Exhibit "2." (Fols. 61–63.)

(9.) In finding that the side lines of lot one extended southerly to Ely lake would appropriate southwesterly all the frontage of said lake within said section. (Fols. 266–267.)

u (10.) In finding that if the side lines of lot 7 were extended easterly only a few feet of lake frontage would be contained in said lot. (Fols. 271–272.)

(11.) In its conclusion of law that the pretended meander line of Ely or Cedar Island lake as the same is described in the purported field notes, and as delineated upon the Government plat is the boundary line of the land owned by plaintiff in lots 3, 5, 6 and 7 in section 4, township 57, range 17. (Fols. 275–276.)

(12.) In its conclusion of law that the defendants are not in possession of any part of the land in said section four belonging to the plaintiffs and do not withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled. (Fol. 276.)

(13.) In its conclusion of law that the defendants are entitled to judgment, that plaintiff take nothing in said action, and for their costs and disbursements. (Fol. 277.)

1 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

STATE OF MINNESOTA, *County of St. Louis,* } ss:

District Court, Eleventh Judicial District.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE S. WECKEY, Respondents.

Complaint in Burns Case.

The plaintiff for its cause of action against the defendants, alleges:

2 1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota and that the defendants are husband and wife.

2. That the plaintiff is seized in fee simple and entitled to the immediate possession of each and all of the following described pieces or parcels of land situate in the county of St. Louis and State of Minnesota, to-wit:

All those portions of lots 3, 5, 6 and 7, in section 4, township 57 north of range 17 west, according to the Government survey thereof, in said county and State, which lie west of a line drawn north and south through the center of said section 4, except the pine timber thereon.

3. That the defendants are in the possession of each of said parcels of land and unlawfully withhold the same from the plaintiff.

Wherefore plaintiff demands judgment:

1. For the possession of said premises.

2. For $100.00 damages for withholding the same, together with the costs and disbursements of this action.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Complaint duly verified.)

Answer in Burns Case.

The defendants above named, for their answer to the complaint of the plaintiff in this action:

3 1. Admit that plaintiff is a corporation and that defendants are husband and wife as therein alleged.

2. Deny that they have any knowledge or information sufficient to form a belief as to whether or not the plaintiff is seized in fee simple, or entitled to the immediate or any possession of either or any of the tracts of land described in said complaint.

3. Deny that defendants are, or either of them is, in possession of any part of the land described in the complaint.

4. For further answer, the defendants allege that lots three (3), five (5), six (6) and seven (7) in section four (4) of township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, are Government lots surveyed to a certain irregular line more particularly and exactly shown by the plat hereto attached and marked Exhibit "A" and hereby made a part of this answer; and defendants allege that lot three (3) named in said complaint contains 50.87 acres of land and no more, that lot five (5) contains 34.75 acres of land and no more, that lot six (6) contains 30.5 acres of land and no more, and that lot seven (7) contains 25.25 acres of land and no more, all according to the Government survey thereof.

And defendants allege that all the land lying south and east of the regular line delimiting said Government lands as hereinbefore alleged is unsurveyed Government land, and that plaintiff has no right, title, interest or estate therein or in any part thereof.

4 And defendants further allege that all said unsurveyed land has never been surveyed or subdivided by the United States Government and is a part of the Government domain; that the same is high, rolling timber-land; that it is not now and never has been any part of any body of water surveyed or meandered, or otherwise, and that the title to all of said land is in the United States, subject only to the rights of the defendants and of other *bona fide* settlers thereon, as such rights may exist under the laws of the United States.

Wherefore, defendants demand judgment that plaintiff take nothing in this action; that defendants have judgment against the plaintiff for the dismissal of this action and for their costs and disbursements herein.

WILSON & VAN DERLIP,
Attorneys for Defendants.

No. 335 Lumber Exchange, Minneapolis, Minn.

(Answer duly verified.)

(The plat referred to as "Exhibit A," in the above answer, is the same plat as is marked "Exhibit B" in the findings of fact herein.)

Reply in Burns Case.

And now again before the court comes the above named
5 plaintiff, and replying to the defendants' answer herein, denies each and every allegation of new matter therein contained.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Reply duly verified.)

Complaint in Weckey Case.

The plaintiff for its cause of action against the defendants alleges:

1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and that the defendants are husband and wife.

2. That the plaintiff is seized in fee simple and entitled to the immediate possession of each and all of the following described pieces or parcels of land situate in the county of St. Louis and State of Minnesota, to-wit: All that portion of the S. E. ¼ of section 4, township 57 north of range 17 west, said county and State, which lies westerly and southerly of a straight line drawn from the center of said section to the southeast corner thereof, the same being portions of lots 1, 3, 5, 6, 7 and 8 of said section 4, according to the Government survey thereof, except the merchantable pine timber thereon.

3. That the defendants are in the possession of each of said parcels of land, and unlawfully withhold the same from the plaintiff.

Wherefore plaintiff demands judgment: 1. For the possession of said premises; (2) for $100 damages for withholding the same,
6 together with the costs and disbursements of this action.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Complaint duly verified.)

Answer in Weckey Case.

The defendants for their answer to the complaint of the plaintiff:

1. Admit that the plaintiff is a corporation and that the defendants are husband and wife, as therein alleged.

2. Deny each and every other allegation in said complaint contained.

3. For further answer defendants allege that the lands described in the complaint are unsurveyed Government lands which are not now and never have been part of any body of water, meandered or otherwise, except the southeast corner of the tract described in the complaint, which lies within and under the waters of a deep, navigable and permanent lake commonly known as Cedar lake or Ely lake; that no portion of the land described in the complaint has ever been surveyed, platted or patented by the United States, and that the title to all of the same is vested in the United States, subject only to the rights of the defendants and others therein as *bona fide* settlers on said lands; that all of said land except the portion lying in said lake, as aforesaid, is high, wooded, agricultural land.

Wherefore defendants demand judgment against the plaintiff:

1. That it take nothing by this action.

2. For defendants' costs and disbursements herein.

WILSON & VAN DERLIP,
Attorneys for Defendants.

No. 335 Lumber Exchange, Minneapolis, Minn.

(Answer duly verified.)

Reply in Weckey Case.

And now again before the court comes the above named plaintiff, and replying to the defendants' answer herein denies each and every allegation of new matter therein contained.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Reply duly verified.)

8 SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY L. BURNS, Defendants,

and

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WICKEY and ROSALIND S. WICKEY, Defendants.

Settled Case.

The above entitled causes were regularly on the March, 1901 calendar of said court, and were duly brought on for trial before Hon. William A. Cant, one of the judges of said court, without a jury, at 9:30 o'clock a. m., on Tuesday, April 2, 1901, Messrs. Billson, Congdon & Dickinson and John G. Williams, Esq., appearing on behalf of the plaintiff, and Messrs. Wilson & Vanderlip and R. R. Briggs, Esq., appearing on behalf of the defendants.

It was stipulated by the respective counsel that the two cases should be tried together, an order to that effect was made by the court, and the cases were so tried. Upon such trial, evidence was offered and proceedings had as follows:

Plaintiff's counsel produced and read to the court written stipulations which had been entered into between the respective parties, which were in full as follows:

9 It is hereby stipulated by and between the attorneys for the respective parties in each of the actions above entitled that the following may be taken as facts which need not be otherwise proved upon the trial of either of said actions in the district court of St. Louis county, subject, however, to any objections which may be made by either party at the trial to the admissibility of such facts or any of the same in the case; but it is expressly stipulated that this stipulation of facts shall have no force or effect except upon the trial of each of said actions to be had at the March, 1901, term of said district court, unless otherwise hereafter expressly and in writing agreed, nor preclude proof of other or additional facts upon said trial.

Stipulated Facts.

1. In 1876, township fifty-seven (57), north of range seventeen (17) west in St. Louis county, was surveyed by order of the U. S. General Land Office under a contract made by the surveyor general for the State of Minnesota with one H. S. Howe, who was by said contract constituted a United States deputy surveyor for said purpose. By virtue of said contract, said Howe was required, and undertook and agreed to survey the said township, and to set posts, and to mark all section and quarter-section corners throughout said township where

the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within said township.

2. Under said contract, said Howe ran and marked the exterior lines of said township, except the south township line, which had been previously surveyed, and set posts at all section and quarter-section corners on said lines. A section corner was also marked at the northwest corner of section 36 in said township (which corner may or may not have been located and marked by said Howe). Said Howe also set a meander post upon the north line of said township as surveyed by him where said line, running west from the northeast corner of the township, first encountered the shore of Ely lake, or Cedar Island lake, as it is sometimes called; but no evidence has ever been found upon the ground, though carefully searched for by experienced land lookers and surveyors, that any interior section corners or quarter-posts were ever established, or any bearing-trees ever marked in said township by said Howe as such deputy surveyor under his said contract, or that any meander line of said lake was ever in fact run or marked by said Howe, or that any meander post was ever located or set around said lake other than hereinbefore stated.

3. Said Howe made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey by him of said township under said contract, purporting to give the lengths and directions of all interior section lines in said township, the locations of all section and quarter-section posts, and bearing-trees thereof, the character of the soil and timber in said township, and all other data and information required by the Statutes of the United States and the rules of the U. S. General Land Office, to be ascertained and reported by deputy surveyors in the due course of making surveys of public lands. There is no evidence that any of the purported facts or data contained in said field notes of said Howe, returned by him as aforesaid, were ascertained by him by any actual survey upon the ground for the ascertainment thereof, except in regard to the exterior lines of said township.

4. From said field notes returned by said Howe, as aforesaid, it appeared that there existed in the northerly part of said township, lying in sections two (2), three (3), four (4), nine (9), ten (10) and eleven (11) thereof, a lake, heretofore referred to, known as Ely or Cedar Island lake, with a surface area, as indicated by said field notes, of about eighteen hundred (1800) acres; that the shores of said lake, in the southeasterly portion thereof, were low and swampy, and that it was the only lake in the township, except a small lake in the westerly part of section eighteen (18), which extends into the adjoining township and is crossed by the western line of said township fifty-seven (57).

5. In fact, instead of having an area of about 1800 acres, Ely or Cedar Island lake then was and still is a body of water of not to exceed eight hundred (800) acres in area. It is a permanent, deep and

navigable lake, running to a depth of sixty-five (65) feet in some places, and having high, steep and heavily timbered banks, except around the outlet thereof. Between the actual water line of said lake and the meander line thereof, as returned by the field notes of said deputy surveyor Howe, there were in 1876, and still are,
12 about one thousand (1000) acres of high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth, and growing down to the water's edge. Certain rocky islands then existed and still exist in said lake, rising but a few feet above the surface of the water, upon which there was at the time of said survey, and still is, a heavy growth of timber which cannot grow in water, and of great age; and the water of said lake was not, at the time of survey, and has not since been higher than the surface of said islands. In said township there existed at the time of said survey, and still exist, numerous lakes of large size and of a deep and permanent character, at least three of which are from a mile and a half to two miles in length, with sharply defined and wooded banks, and which would be crossed by the section lines described by Howe in his field notes, none of which lakes is referred to, or purported to be meandered or described in said field notes.

6. The defendants in each of the actions above entitled, respectively, have been in actual and continuous occupancy of a portion of the land lying between the meander line described and returned by said Howe in his said field notes, and as located upon the Government plat of said township and the actual water line of said Ely or Cedar Island lake since the spring of 1892; said occupancy has been under the claim that the lands occupied by the defendants, respectively, were and are unsurveyed Government lands that have not been patented by the Government; and the defendants have
13 upon the lands occupied by them, respectively, made valuable and lasting improvements.

7. The said field notes and report of survey made and filed by said Howe were approved by the surveyor general of the United States for the district of Minnesota August 7th, 1876, and a plat of such township was made in accordance with such field notes by or under the direction of said surveyor general, and was officially approved by him on said 7th day of August, 1876, and a duly certified copy thereof was transmitted by him to, and was filed in, the proper local United States land office on the 24th day of August, 1876; and another duly certified copy of the same was by him forwarded to the General Land Office of the United States where the same was filed August 23rd, 1876, and was by that office accepted as representing a correct survey of said township, and as the official plat thereof.

A copy of such plat is hereto annexed and marked "Exhibit A."

Such survey and official plat were the only survey and plat of said township, or of the lands in question, ever made by or under the authority of the United States Government.

Exhibit "B," hereto attached and made a part hereof, correctly

delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the said official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists, and as it did exist in 1876 when said field notes were made and filed.
14 A portion of the land lying between said lines is the land involved in these actions.

Exhibit "C," hereto attached and made a part hereof, is a true and correct copy of the said field notes returned by Deputy Surveyor Howe.

8. Between December, 1879, and March, 1887, all the lands in said township shown upon the Government plat as lands were patented and conveyed by the United States, pursuant to the various laws relating to the disposal of public lands. All such patents contained, after the description of the lands embraced therein and a statement of the acreage, the following clause, usual in such patents: "According to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general." The plat thus referred to in the patents was the official plat hereinbefore referred to, of which Exhibit "A" is a copy.

9. Government lots three (3), five (5), six (6) and seven (7) of said section four (4), as returned by said survey and shown upon said plat, were pre-empted pursuant to the provisions of law relating to the pre-emption of public lands, subsequent to the filing of the official plat as aforesaid in the General Land Office, and were patented to such pre-emptors in or prior to the year 1888; the acreage of such lots, respectively, as specified in such patents and as marked upon said official plat, was as follows: Lot three (3), fifty and 37–100 (50.37) acres; lot five (5), thirty-four and 75–100 (34.75) acres; lot six (6), thirty and 5–10 (30.5) acres; and lot seven (7), twenty-five and 25–100 (25.25) acres. By divers mesne conveyances
15 from said patentees, the title to said lots became vested in the plaintiff in the year 1891 and prior to the commencement of these actions, and the plaintiff is still the owner thereof, and of the full quantity of land above specified as contained therein, if bounded by said original meander line.

10. In like manner, Government lots one (1) and eight (8) in section four (4), as returned by said surveyor general and shown upon said official plat, were pre-empted by and patented to certain other persons, which patents were executed in or prior to the year 1888; by divers mesne conveyances from said patentees, the title of said lots became vested, prior to the year 1892, in Simon J. Murphy and others by whom a quit-claim deed was executed and delivered to the plaintiff in the year 1892, and prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff the following described premises, to-wit: That part of the southeast quarter (S. E. ¼) of said section four (4) lying southerly and westerly of a line drawn from the center of said section to the southeast corner thereof, and also all the interest of the grantors in the west half of said section.

No part of said described premises has ever been conveyed or attempted to be conveyed by the plaintiff.

At the same time, the plaintiff executed and delivered to said Simon J. Murphy and others a quit-claim deed purporting to convey to said grantees the following described property, to-wit: That part of the east half (E. ½) of said section four (4) lying northerly and easterly of a line drawn from the center of said section to the
16 southeast corner thereof.

11. By reason of the ownership of said Government lots, and the execution and delivery of the quit-claim deed mentioned in paragraph numbered 10, plaintiff claims to be the owner of the land occupied by the respective defendants in the actions above entitled, which lies between the meander line reported and described by said Howe, as aforesaid and as delineated on said official plat, of said Government lots numbered one (1), three (3), five (5), six (6), seven (7) and eight (8) and the actual water line of said Ely or Cedar Island lake.

12. The defendants claim, and each of them claims, that said meander line reported and described by said Howe as aforesaid, and delineated upon said Government plat of said township, is the boundary line of the land owned by the plaintiff as aforesaid, and that plaintiff has no right, title, interest or estate in the land occupied by either of said defendants, or in any part thereof.

Dated April 2, 1901.

(Signed) BILLSON, CONGDON & DICKINSON &
JOHN G. WILLIAMS,
Attorneys for Plaintiff.

(Signed) WILSON & VANDERLIP &
R. R. BRIGGS, *Attorneys for Defendants.*

17 Plaintiff then offered in evidence the first numbered paragraph of the above stipulation, which was received.

Plaintiff offered in evidence the second numbered paragraph of said stipulation, down to and including the words, near the middle thereof, "as it is sometimes called," which was received.

The plaintiff then offered in evidence the third numbered paragraph of said stipulation, down to and including the words, "in due course of making surveys of public lands," which evidence was received.

The plaintiff offered in evidence the fourth numbered paragraph of said stipulation, which was received.

The plaintiff offered in evidence paragraph 7 of said stipulation, excepting the portion thereof commencing with the words, "Exhibit B." and ending with the words, "in these actions," including the plat therein referred to and marked "Exhibit A," the same being the Government township plat embracing the lands in question, and being the same plat a copy of which is attached to the findings of the court in these causes. Such offer also embraces what is referred to in said stipulation as "Exhibit C," being a copy of the field notes

returned by said deputy surveyor Howe, all of which was received in evidence.

The plaintiff offered in evidence the eighth numbered paragraph of said stipulation, the first sentence in which was objected to by defendants upon the ground that the same was immaterial and
18 irrelevant, which objection was over-ruled by the court, the evidence received, and the defendants duly excepted.

The plaintiff then offered in evidence the ninth numbered paragraph of said stipulation, which was received.

Plaintiff then offered in evidence the tenth numbered paragraph of said stipulation, which was objected to by the defendants as immaterial, irrelevant and not tending to prove title. These objections were over-ruled and the evidence received, to which ruling defendants duly excepted.

Plaintiff then offered in evidence the eleventh numbered paragraph of said stipulation, which was received.

Thereupon, the plaintiff rested its case.

The defendants then moved that said causes be dismissed upon the ground that the plaintiff had not established any cause of action.

This motion was denied, to which ruling the defendants duly excepted.

Defendants then offered in evidence portions of the said stipulation which had not been offered by the plaintiff, as follows:

That part of the second paragraph of said stipulation commencing with the words "but no evidence has ever been found." The plaintiff objected to such evidence as incompetent, irrelevant, immaterial and not admissible under the pleadings. These objections were over-ruled by the court, to which ruling the plaintiff duly excepted.

The defendants offered in evidence that portion of paragraph three which had not been offered by the plaintiff, commencing with
19 the words "there is no evidence that," which evidence was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings. These objections were over-ruled by the court, and the plaintiff duly excepted thereto.

Defendants offered in evidence the fifth numbered paragraph of said stipulation, which evidence was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings. Such objections were over-ruled by the court, and the plaintiff duly excepted.

The defendants offered in evidence the sixth numbered paragraph of said stipulation, which was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial, and inadmissible under the pleadings.

Such objections being over-ruled by the court, the plaintiff duly excepted to such ruling.

The defendants offered in evidence that portion of paragraph seven of said stipulation which had not been offered by the plaintiff, commencing with the words "Exhibit B hereto attached" and

ending with the words "in these actions;" this part embracing also the plat marked "Exhibit B" referred to in said stipulation, and a copy of which is attached to the findings of the court in said cause, being the plat showing the actual location of Cedar Island lake. This was objected to by the plaintiff on the ground that the same was incompetent, immaterial and irrelevant, and not admissible under the pleadings.

20 The defendants offered in evidence paragraph twelve of the stipulation, to which the plaintiff made the same objections heretofore expressed, which were overruled by the court, and to which ruling the plaintiff duly excepted.

Thereupon, the defendants rested their cases.

The plaintiff then offered in evidence a certified copy of certain proceedings had in the office of the land commissioner and of the surveyor general of the State of Minnesota, which is hereto annexed and marked "Exhibit D;" that the purpose of offering this exhibit was to show that whatever irregularities, defects or incorrectness there may have been in the survey, the Government had notice of the same.

The defendants objected to the reception of this evidence on the ground that it was not proper rebutting evidence nor competent for the purpose for which it was offered, and that it was irrelevant and immaterial to any issue in the case. These objections were overruled, and defendants duly excepted.

The plaintiff then again rested its case; whereupon the defendants offered in evidence a certified copy of a decision of the Secretary of the Interior of the United States, dated January 19, 1895, to be considered in connection with the evidence last offered by the plaintiff. This was objected to by the plaintiffs as being incompetent, irrelevant and immaterial, and inadmissible under the pleadings, which objections were overruled and the plaintiff duly excepted. A copy of such evidence is hereto attached, marked "Exhibit 1."

21 The defendants then offered in evidence a copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, addressed to the United States surveyor general, directing him to make a contract for the survey of these lands. A copy of this instrument is hereto attached and marked "Exhibit 2." Plaintiff objected to such evidence upon the same grounds as those last above stated, which objections were overruled, and to such ruling the plaintiff duly excepted.

It was then admitted by counsel for the respective parties, subject to the objections (on the part of the plaintiff, that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings), that pursuant to the directions of the Secretary of the Interior in the above "Exhibit 1," a hearing was had before the surveyor general of the State of Minnesota, of which hearing the plaintiff in these actions had notice, and at which it appeared by counsel and objected to the hearing taking place upon the ground that the General Land Office had no jurisdiction in the premises, and that

plaintiff took no further part in that hearing; that plaintiff had notice of further proceedings leading up to the order for the survey shown in Defendants' "Exhibit 2," above referred to. Such fact was received in evidence, the plaintiff's objections thereto being overruled, to which ruling plaintiff duly excepted.

It was further admitted by counsel for the respective parties that no survey had ever been made pursuant to the direction of the Commissioner of the General Land Office shown in the foregoing
22 "Exhibit 2," but that at the instance of the owners of certain Government lots in section four (4) and other sections in said township, the making of a survey was restrained by a decree of the United States circuit court for the district of Minnesota, from which decree an appeal was then pending at the instance of the Government of the United States and had not been submitted to the circuit court of appeals or settled.

The case was then closed, and after argument by the respective parties, was submitted to the court for decision; and after consideration of the same by the court, the court made its findings of fact and conclusions of law shown in the record in said causes.

The foregoing statement is hereby made and proposed as a case in the cases herein entitled as constituting a complete statement and record of all the evidence presented at the trial of such causes, of the objections thereto and rulings of the court thereon, and of the exceptions by the respective parties to such ruling, and of all the proceedings in said causes not otherwise appearing of record, excepting that by consent of the parties there is omitted from such record the field notes therein referred to, the facts concerning which, as set forth herein, are to be accepted in place of said field notes, with the same effect as though such field notes showing such facts had been formally included herein.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

23 The defendants proposed an amendment to the above proposed case, to wit: that Exhibit C, being the field notes introduced in evidence, be embodied in full, and the same was done and is found as Exhibit C, hereof.

The plaintiff submitted a motion which is on file in the causes, to amend the findings in certain respects. That after argument by respective counsel and consideration thereof, the court made and filed an order granting the motion to amend in part, and denying it in part.

It is stipulated that the above statement of facts in the causes herein entitled, as above amended, constitute a complete statement and record of all the evidence presented at the trial of such causes, of the objections thereto and the rulings of the court thereon, and of the exceptions by the respective parties to such rulings, and of the proceedings in said causes not otherwise appearing of record; and

it is stipulated that the court may sign and allow the above as the settled case in each of the above entitled causes.

Dated December 18, 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*
WILSON & VANDERLIP AND
R. R. BRIGGS, *Attorneys for Defendants.*

24 Pursuant to the above stipulation, and the forogoing case being examined and found conformable to the truth and to contain all the evidence offered and received, and all the proceedings had and the objections made, together with the rulings thereon, the same is hereby allowed and signed as the settled case in each of the said actions, and directed to be filed as part of the record of each of them.

Dated December 18, 1901.

WM. A. CANT,
District Judge.

EXHIBIT C.

I, Henry S. Howe, having been appointed a deputy surveyor of the lands of the United States, in Minnesota, do solemnly swear that I will well and faithfully, and to the best of my skill and ability, execute the duties confided to me, pursuant to a contract with James H. Baker, surveyor general of public lands, in Minnesota, bearing date the 26th day of April, 1876, according to the laws of the United States, and the instructions received from the said surveyor general.

HENRY S. HOWE.

Subscribed and sworn to by the above named Henry S. Howe, before me a notary public, for Ramsey county, in the State of Minnesota, this 5 day of May, 1876.

[NOTARIAL SEAL.]

I. N. CARDOZO,
Notary Public, Minn.

25 I, Frank D. Howe, and I, Burt Martin, do solemnly swear that I will faithfully execute the duties of chain carrier; that I will level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that I will report the true distance to all notable objects, and the true length of all lines that I assist in measuring, to the best of my skill and ability.

FRANK D. HOWE.
B. MARTIN.

Subscribed and sworn to by the above named persons before me, a notary public, for Ramsey county, in the State of Minnesota, this 6th day of May, 1876.

[NOTARIAL SEAL.]

HENRY S. HOWE,
Notary Public.

I, Orrin N. Parker, do solemnly swear that I will well and truly perform the duties of axman, according to the instructions given me, and to the best of my skill and ability.

ORRIN N. PARKER.

Subscribed and sworn to by the above named person, before me, a notary public, for Ramsey county, in the State of Minnesota, this 6th day of May, 1876.

HENRY S. HOWE,
Notary Public.

[NOTARIAL SEAL.]

Tp. 57 N., R. 17 W.

Field notes of the survey of the sub-division lines and meanders of township 57 north of range 17 west of the 4th principal meridian, in the State of Minnesota, by Henry S. Howe, deputy sur-
26 veyor, under his contract, No. —, bearing date the 26th day of April, 1876.

Survey commenced June 20th, 1876, and
Completed June 30th, 1876.

Having surveyed the exterior lines of this township, I begin at the post on the 7th correction line, the corner to sections 35 and 36, tp. 57 N. R. 17 W. and run as follows:

Chains North between sec. 35 & 36,
Var. 10 degrees 20 minutes east.

40.00 Set a post for ¼ sec. cor. from which
Tam. 7 N. 10 E. 35 lks.
Tam. 8 N. 25 W. 40 lks.

40.20 Enter swamp brs. E. & W.

55.50 Leave swamp brs. E. & W.

68.02 Left bank St. Louis river, east. Set a post for corner to fractional secs. 35 & 36 from which fir 8 S. 59 E. 12 lks.
W. pine 18 S. 41 W. 13 lks.
To ascertain the distance across the river on this line, I run a base N. 47 degrees 51 minutes E. 63 lks. to a point from which the flag in line on right bank bears N. 17 degrees 12 minutes west, I find the distance to be 1.93 chains.

69.95 Set a post on right bank for corner to fractional sections 35 & 36 from which
W. pine 20 N. 23 E. 6 links.
Fir 8 N. 66 W. 11 lks.

80.00 Set a post for cor. to sections 25, 26, 35 & 36 from which
Fir 5 N. 14 E. 32 lks.
Blk. pine 7 N. 34 W. 20 lks.

27 Fir 3 S. 25 W. 16 lks.
Birch 8 S. 65 W. 20 lks.
Land rolling. Soil 3d rate.
Timber: Spruce, birch, aspen, tam., maple & pine.
Undergrowth, aspen, fir & alder.

East on a random line between sections 25 & 36.
Var. 10 degrees E.

4.42 Right bank St. Louis river, south, set a post for cor. to fractional sections 25 & 36 from which
Birch 5 S. 85 W. 22 lks.
Pine 5 N. 22 E. 11 lks.
To ascertain the distance across the river on this line, I run a base N. 48 E. 1.00 chains to a point from which the flg. in line on left bank brs. S. 68 degrees 40 minutes E. I find the distance to be 2.46 chains.

6.88 Set a post on left bank for cor. to fractl. sects. 25 & 26 from which
Birch 6 N. 80 E. 20 lks.
Birch 8 S. 10 W. 12 lks.

40.00 Set temp. ¼ sec. cor.

80.10 Intersect east boundary line at corner to sections 25 & 36 from which corner I run
West on a true line between sections 25 & 36

40.05 Set a post for ¼ section corner from which
Aspen 10 N. 52 W. 16 lks.
Birch 5 S. 26 E. 26 lks.

80.10 The corner to sections 25, 26, 35 & 36.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, tam., maple & pine.

28 Undergrowth the same & fir.

North between sections 25 & 26.
Var. 10 degrees E.

6.30 Creek 6 lks. runs S. E.

24.00 Enter swamp brs. N. E. & S. W.

40.00 Set a post for ¼ sec. cor. from which
Tam. 3 N. 25 W. 16 lks.
Tam. 4 N. 18 E. 10 lks.

80.00 Set a post for corner to sections 23, 24, 25 & 26, from which
Spruce 6 N. 55 E. 11 lks.

Spruce 4 N. 25 W. 20 lks.
Tam. 4 S. 19 W. 36 lks.
Tam. 3 S. 40 E. 18 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam., birch & cedar.
Undergrowth the same.

East on a random line between sections 24 & 25.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.

80.35 Intersect east boundary 24 lks. north of cor. to sections 24 & 25 from which corner I run.

N. 89 degrees 50 minutes W. on a true line between sections 24 & 25.

40.17 Set a post for ¼ sec. cor. from which
Tam. 4 N. 10 E. 21 lks.
Tam. 3 S. 56 W. 13 lks.

80.35 The corner to sections 23, 24, 25 & 26.
Land level. Soil 3d rate.
Timber, small spruce & tam.
Undergrowth the same.

---

29 North between sections 23 & 24.
Var. 9 degrees 45 minutes E.

40.00 Set a post for ¼ section cor. from which
Spruce 3 N. 31 W. 5 lks.
Spruce 4 N. 10 E. 7 lks.

41.00 Leave swamp brs. N. W. & S. E.

80.00 Set a post for corner to sections 13, 14, 23, & 24 from which
Tam. 8 N. 50 W. 50 lks.
Tam. 10 N. 22 E. 75 links.
Birch 8 S. 45 E. 65 links.
Birch 12 S. 25 W. 100 links.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, birch & aspen, mostly fire killed.
Undergrowth, aspen, fir & Norway pine.

East on a random line between sections 13 & 24.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ sec. cor.

80.23 Intersect east boundary 30 lks. north of corner to sections 13 & 24 from which corner I run
N. 89 degrees 47 minutes W. on a true line between sections 13 & 24.

40.12 Set a post for ¼ sec. cor. from which
Birch 8 N. 70 E. 22 lks.
Cedar 6 S. 28 W. 5 lks.

80.32 The corner to sections 13, 14, 23 & 24.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, tamarac- & cedar, nearly all fire killed.
Undergrowth, aspen, N. pine & fir.

---

30 North between sections 13 & 14.
Var. 9 degrees 40 minutes E.

20.00 Enter swamp brs. N. E. & S. W.

40.00 Set a post for ¼ sec. cor. from which
Spruce 4 N. 10 W. 22 lks.
Spruce 3 N. 46 E. 18 lks.

53.00 A creek 5 lks. wide runs west.

80.00 Set a post for corner to sections 11, 12, 13 & 14 from which
Tam. 3 N. 41 E. 17 lks.
Tam. 5 N. 74 W. 12 lks.
Tam. 3 S. 36 W. 14 lks.
Tam. 3 S. 29 E. 8 lks.
Land level & wet. Soil 3d rate.
Timber, small spruce & tamarac-.
Undergrowth, the same.

JUNE 20TH, 1876.

East on a random line between sections 12 & 13.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
80.18 Intersect east boundary 26 lks. N. of corner to sections 12 & 13.
From which corner I run
N. 89 degrees 49 minutes W. on a true line between sections 12 & 13.
40.09 Set a post for ¼ sec. cor. from which
Tam. 4 N. 9 W. 21 lks.
Tam. 3 S. 62 E. 15 lks.
80.18 The corner to sections 11, 12, 13 & 14.
Land level & wet. Soil 3d rate.
Timber: Small spruce & tamarac-.
Undergrowth, the same.

---

31 North between sections 11 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Tam. 5 N. 19 W. 6 lks.
Tam. 8 N. 80 E. 13 lks.
80.00 Set a post for corner to sections 1, 2, 11 & 12 from which
Tam. 4 N. 65 E. 8 lks.
Tam. 5 N. 40 W. 10 lks.
Tam. 3 S. 16 W. 6 lks.
Spruce 4 S. 66 E. 9 lks.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

East on a random line between sections 1 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
80.12 Intersect east boundary 20 lks. N. of the cor. to sections 1 & 12
From which corner I run
N. 89 degrees 51 minutes W. on a true line between sections 1 & 12.

40.06 Set a post for ¼ section corner from which
Cedar 10 N. 15 W. 26 lks.
Spruce 8 S. 76 W. 21 lks.
80.12 The corner to sections 1, 2, 11 & 12.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

The line between sections 2 & 11 will strike "Cedar Island
32 lake" in less than 80.00 chains, I therefore run it west
on a true line between sections 2 & 11.
Var. 9 degrees 40 minutes E.
35.00 Intersect S. E. shore of Cedar Island lake brs. N. E. & S. W.
Set a post for cor. to fractional sections 2 & 11 from which
Cedar 5 N. 42 E. 19 lks.
Spruce 8 S. 38 E. 29 lks.
The corner to secs. 2, 3, 10 & 11 is in the lake & cannot be set.
Land level & wet. 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

North on a random line between sections 1 & 2.
Var. 9 degrees 40 minutes E.
37.00 Creeks 6 lks. runs west.
40.00 Set temp. ¼ sec. cor.
58.00 Leave swamp brs. N. E. & S. W.
80.25 Intersect north boundary 28 lks. west of corner to sections 1 & 2.
From which corner I run
S. 0 degrees 12 minutes west on a true line between sections 1 & 2.
40.25 Set a post for ¼ section corner from which
Tam. 6 N. 32 E. 18 lks.
Spruce 7 S. 20 W. 24 lks.
80.25 The corner to sections 1, 2, 11 & 12.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch, aspen & pine.
Undergrowth, the same.

---

33 North between sections 34 & 35.
Var. 10 degrees 20 minutes E.
7.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ section cor. from which
Tam. 3 N. 50 W. 11 lks.
Tam. 3 N. 65 E. 14 lks.
80.00 Set a post for corner to sections 26, 27, 34 & 35 from which
Tam. 7 N. 50 E. 18 lks.
Spruce 9 N. 20 W. 10 lks.

Spruce 10 S. 60 W. 9 lks.
Tam. 4 S. 10 E. 14 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch.
Undergrowth, the same.

East on a random line between sections 26 & 35.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
52.00 Leave swamp brs. N. E. & S. W.
79.86 Intersect N. & S. line 35 lks. north of cor. to secs. 25, 26, 35 & 36.
From which corner I run
N. 89 degrees 45 minutes W. on a true line between sections 26 & 35.
39.93 Set a post for ¼ section corner from which
Tam. [illegible] 37 W. 20 lks.
Spruce [illegible] S. 32 E. 10 lks.
79.86 The corner to sections 26, 27, 34 & 35.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch & aspen.
Undergrowth the same.

JUNE 21ST, 1876.

---

34 N. between secs. 26 and 27.
Var. 10 degrees E.

40.00 Set a post for ¼ section cor. from which
Spruce 8 N. 52 W. 18 lks.
Tam. 5 N. 45 E. 9 lks.
80.00 Set a post cor. to sections 22, 23, 26 & 27 from which
Cedar 8 N. 25 E. 36 lks.
Spruce 10 N. 54 W. 17 lks.
Spruce 5 S. 72 W. 40 lks.
Tam. 3 S. 24 E. 18 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

East on a random line between sections 23 & 26.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
47.50 Creek 5 lks. runs S. E.
79.68 Intersect N. & S. line 40 lks. N. of cor. to sects. 23, 24, 25 & 26.
From which corner I run
N. 89 degrees 43 minutes W. on a true line between sections 23 & 26.
39.84 Set a post for ¼ section corner from which
Cedar 4 N. 11 W. 26 lks.

Spruce 6 S. 75 E. 9 lks.
79.68 The corner to sections 22, 23, 26 & 27.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

North between sections 22 & 23.
Var. 10 degrees 10 minutes E.

35

15.00 Leave swamp brs. N. E. & S. W.
33.00 Enter swamp brs. N. W. & S. E.
40.00 Set a post for ¼ sec. cor. from which
Spruce 10 N. 11 W. 21 lks.
Spruce 7 S. 28 E. 3 lks.
72.50 Leave swamp brs. N. E. & S. W.
80.00 Set a post for cor. to sections 14, 15, 22 & 23 from which
Cedar 8 N. 82 E. 11 lks.
Birch 12 N. 50 W. 16 lks.
Birch 4 S. 65 W. 8 lks.
Spruce 10 S. 22 E. 19 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch & aspen.
Undergrowth, the same and fir.

East on a random line between sections 14 & 23.
Var. 9 degrees 50 minutes E.

6.00 Enter swamp brs. N. E. & S. W.
35.00 Leave swamp brs. N. & S.
40.00 Set temp. ¼ sec. cor.
79.90 Intersect N. & S. line 32 lks. south of cor. to sections 13, 14, 23
& 24 from which corner I run
S. 89 degrees 46 minutes W. on a true line between sections 14 & 23.
39.95 Set a post for ¼ section cor. from which
Spruce 8 N. 59 W. 18 lks.
Birch 10 S. 18 W. 10 lks.
79.90 The corner to sections 14, 15, 22 & 23.
Land level. Soil 3d rate.
Timber: Spruce, birch, tamarac-, cedar & aspen.
Undergrowth, the same & fir.

---

36 North between sections 14 & 15.
Var. 10 degrees E.

33.00 Creek 6 lks. runs S. W.
40.00 Set a post for ¼ section cor. from which
Fir 4 N. 70 W. 9 lks.
Fir 3 N. 56 E. 11 lks.

80.00 Set a post cor. to sections 10, 11, 14 & 15, from which
Cedar 6 N. 9 E. 12 lks.
Birch 14 N. 82 W. 15 lks.
Cedar 8 S. 38 W. 30 lks.
Aspen 12 S. 40 E. 27 lks.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, cedar, tamarac- & maple.
Undergrowth, the same & fir.

East on a random between sections 11 & 14.
Var. 10 degrees E.

11.00 Enter swamp brs. N. & S.
40.00 Set temp. ¼ sec. cor.
79.85 Intersect N. & S. line 22 lks. south of cor. to sects. 11, 12, 13 & 14
From which corner I run
S. 89 degrees 51 minutes west on a true line between sections 11 & 14.
39.92 Set a post for ¼ sec. cor. from which
Spruce 3 N. 35 W. 18 lks.
Tam. 6 S. 30 W. 14 lks.
79.85 The corner to sections 10, 11, 14 & 15.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar, birch, aspen & maple.
Undergrowth, the same.

---

37 North between sections 10 & 11.
Var. 10 degrees E.

12.50 Stream 25 lks. runs S. W.
25.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Spruce 5 S. 74 W. 9 lks.
Spruce 8 S. 50 E. 11 lks.
47.00 Leave swamp brs. N. E. & S. W.
55.00 South shore of Cedar Island lake brs. E. & W.
Set a post for cor. to fractional sects. 10 & 11 from which
Cedar 8 S. 65 E. 28 lks.
Tam. 5 S. 20 W. 12 lks.
Lake extends from this point north across the twp. line.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, cedar & tamarac-.
Undergrowth, the same.

JUNE 22, 1876.

North between sections 33 & 34.
Var. 10 degrees 15 minutes E.

27.50 Creek 6 lks. runs S. E.
40.00 Set a post for ¼ sec. cor. from which
Birch 4 N. 36 W. 26 lks.

Aspen 10 N. 45 E. 14 lks.
60.00 Enter swamp brs. N. E. & S. W.
80.00 Set a post corner to sections 27, 28, 33 & 34 from which
Cedar 5 N. 30 E. 45 lks.
Cedar 10 N. 68 W. 55 lks.
Cedar 5 S. 20 W. 15 lks.
Spruce 4 S. 70 E. 35 lks.
38 Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, tamarac- & cedar.
Undergrowth, aspen, fir, pine & alder.

East on a random line between sections 27 & 34.
Var. 10 degrees E.
16.50 Leave swamp brs. N. E. & S. W.
39.50 Creek 5 lks. runs S. W.
40.00 Set temp. ¼ sec. cor.
46.00 Enter swamp brs. N. & S.
80.42 Intersect N. & S. line 60 lks. N. of cor. to sects. 26, 27, 34 & 35
From which corner I run
N. 89 degrees 34 minutes W. on a true line between sections 27 & 34.
40.21 Set a post for ¼ sec. cor. from which
Cedar 5 N. 40 W. 20 lks.
Spruce 4 S. 18 E. 29 lks.
80.42 The corner to sections 27, 28, 34 & 35.
Land level. Soil 3d rate.
Timber: Spruce, birch, tam., cedar & aspen.
Undergrowth, the same & fir.

North between sections 27 & 28.
Var. 9 degrees 50 minutes E.
40.00 Set a post for a ¼ sec. cor. from which
Cedar 10 N. 45 W. 10 lks.
Spruce 4 N. 56 E. 4 lks.
54.00 Leave swamp brs. N. E. & S. W.
65.00 Stream 25 lks. runs S. W.
80.00 Set a post for corner to sections 21, 22, 27 & 28 from which
Aspen 4 N. 56 E. 11 lks.
Aspen 3 N. 30 W. 40 lks.
39 Birch 10 S. 46 W. 10 lks.
Tam. 10 S. 36 E. 24 lks.
Land generally level. Soil 3d rate.
Timber: Spruce, tam., birch, cedar & aspen.
Undergrowth, the same.

East on a random line between sections 22 & 27.
Var. 9 degrees 35 minutes E.
7.50 Stream 25 lks. wide runs S. W.

39.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ sec. cor.
80.12 Intersect N. & S. line 24 lks. N. of cor. to sections 22, 23, 26 & 27 from which corner I run
N. 89 degrees 50 minutes W. on a true line between sections 22 & 27.
40.06 Set a post for ¼ sec. cor. from which
Cedar 10 S. 80 E. 15 lks.
Spruce 12 N. 45 W. 17 lks.
80.12 The corner to sections 21, 22, 27 & 28.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar, birch & aspen.
Undergrowth, the same.

North between sections 21 & 22.
Var. 9 degrees 40 minutes E.
15.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Tam. 6 N. 50 E. 14 lks.
Tam. 8 N. 45 W. 26 lks.
61.50 Leave swamp brs. N. W. & S. E.
80.00 Set a post for corner to sections 15, 16, 21 & 22 from which
Birch 4 N. 42 W. 24 lks.
Fir 3 N. 30 E. 36 lks.
40 Fir 5 S. 70 E. 30 lks.
Birch 6 S. 80 W. 19 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam., birch, cedar & aspen.
Undergrowth, the same & fir.

East on a random line between sections 15 & 22.
Var. 9 degrees 30 minutes E.
25.00 Stream 25 lks. runs south.
40.00 Set temp. ¼ sec. cor.
79.76 Intersect N. & S. line 48 lks. south of cor. to sects. 14, 15, 22 & 23 from which corner I run
S. 89 degrees 39 minutes west on a true line between sections 15 & 22.
39.88 Set a post for ¼ sec. cor. from which
Fir 5 S. 20 W. 10 lks.
Fir 3 N. 38 W. 15 lks.
79.76 The corner to sections 15, 16, 21 & 22.
Land rolling. Soil 3d rate.
Timber: Birch, tam., spruce, aspen & cedar, mostly fire killed.
Undergrowth, the same & fir.

North between sections 15 & 16.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Birch 18 N. 70 E. 102 lks.
Birch 5 N. 38 W. 115 lks.
44.00 Enter swamp brs. N. E. & S. W.
80.00 Set a post for corner to sections 9, 10, 15 & 16 from which
Cedar 10 N. 60 E. 45 lks.
Cedar 6 N. 46 W. 34 lks.
Tam. 8 S. 35 W. 12 lks.
41 Tam. 6 S. 75 E. 40 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, tamarac-, spruce, cedar, aspen & maple.
Undergrowth, aspen, fir & alder.

JUNE 23D, 1876.

East on random line between sections 10 & 15.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
62.00 Leave swamp brs. N. E. & S. W.
72.00 Stream 25 lks. runs S. W.
80.10 Intersect N. & S. line 20 lks. south of corner to sections 10, 11, 14 & 15 from which corner I run
S. 89 degrees 51 minutes W. on a true line between sections 10 & 15
40.05 Set a post for ¼ sec. cor. from which
Tam. 3 S. 31 W. 10 lks.
Tam. 5 N. 80 W. 15 lks.
80.10 The corner to sections 9, 10, 15 & 16.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar & birch.
Undergrowth, the same, aspen & fir.

North between sections 9 & 10.
Var. 9 degrees 35 minutes E.

15.00 Leave swamp brs. E. & W.
40.00 Set a post for ¼ sec. cor. from which
Cedar 10 N. 80 W. 50 lks.
Tam. 12 N. 35 E. 42 lks.
46.40 Set a post on south shore of Cedar Island lake for corner to fractional sections 9 & 10 from which
Cedar 5 S. 50 E. 26 lks.
Birch 8 S. 42 W. 15 lks.
42 The point for corner to sections 3, 4, 9 & 10 falls in the lake and cannot be set.
Land rolling. Soil 3d rate.
Timber: Birch, tamarac-, spruce, cedar & Norway pine.
Undergrowth, the same & bl'k alder.

The point for corner to sections 3, 4, 9 & 10 being in the lake I begin at the corner to sections 3 & 4 on the north boundary of the township and run south on a true line between sections 3 & 4.

Var. 9 degrees 30 minutes E.

26.10 Set a post on north shore of lake for corner to fractional sects. 3 & 4 from which
Birch 6 N. 54 E. 25 lks.
Birch 10 N. 60 W. 18 lks.
From this point the flag in line between sections 8 & 9 on south shore of lake bears S. 0 degrees 15 minutes E.
To ascertain the distance across the lake on this line I run a base N. 82 E. 15.00 chains to a point from which the flag in line on south shore bears S. 9 degrees 10 minutes, west I find the distance across the lake to be 87.60 chains.
Land rolling. Soil 3d rate.
Timber· Birch, spruce, tam., aspen, cedar, maple & pine.
Undergrowth, the same.

North between sections 32 & 33.

Var. 10 degrees E.

40.00 Set post for ¼ sec. cor. from which
Spruce 4 N. 10 E. 16 lks.
Spruce 3 N. 64 W. 18 lks.

43

80.00 Set a post for corner to sections 28, 29, 32 & 33 from which
Cedar 5 N. 60 E. 23 lks.
Tam. 3 N. 32 W. 19 lks.
Tam. 3 S. 58 W. 10 lks.
Spruce 5 S. 23 E. 14 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam. & cedar.
Undergrowth, the same.

East on a random line between sections 28 & 33.

Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
79.82 Intersect N. & S. line 72 lks. N. of cor. to sections 27, 28, 33 & 34 from which corner I run
N. 89 degrees 29 minutes W. on a true line between sections 28 & 33.
39.91 Set a post for ¼ sec. cor. from which
Tam. 4 N. 50 E. 26 lks.
Tam. 3 S. 46 E. 19 lks.
79.82 The corner to sections 28, 29, 32 & 33.
Land level & wet. Soil 3d rate.
Timber: Small spruce, tamarac- & cedar.
Undergrowth the same.

North between sections 28 & 29.
Var. 9 degrees 50 minutes E.

5.00 Leave swamp brs. E. & W.
25.00 Stream 25 lks. runs S. W.
39.00 Enter swamp brs. E. & W.
40.00 Set post for ¼ sec. cor. from which
Cedar 4 N. 55 W. 11 lks.
Spruce 4 M. 80 E. 9 lks.

44

80.00 Set a post for cor. to sections 20, 21, 28 & 29 from which
Spruce 8 N. 25 E. 18 lks.
Spruce 4 N. 85 W. 10 lks.
Spruce 4 S. 60 W. 14 lks.
Tam. 3 S. 46 E. 17 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

JUNE 24, 1876.

East on a random line between sections 21 & 28.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ sec. cor.
72.40 Leave swamp brs. N. E. & S. W.
79.90 Intersect N. & S. line 43 lks. N. of cor. to sects. 21, 22, 27 & 28 from corner I run
N. 89 degrees 42 minutes west on a true line between sections 21 & 28.
39.95 Set a post for ¼ sec. cor. from which
Tam. 3 N. 80 E. 5 lks.
Tam. 4 S. 55 W. 6 lks.
79.90 The corner to sections 20, 21, 28 & 29.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

North between sections 20 & 21.
Var. 9 degrees 45 minutes E.

12.50 Creek 5 lks. runs south west.
40.00 Set a post for ¼ sec. cor. from which
Tam. 5 N. 18 E. 42 lks.
Tam. 5 N. 45 W. 36 lks.
68.60 Creek 6 lks. runs S. west.

45

80.00 Set post for cor. to sects. 16, 17, 20 & 21 from which
Cedar 6 N. 43 E. 21 lks.
Cedar 5 N. 60 W. 23 lks.
Spruce 5 S. 65 W. 33 lks.
Spruce 3 S. 20 E. 40 lks.

Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth the same.

East on a random line between sections 16 & 21.
Var. 9 degrees 40 minutes E.

10.00 Creek 5 lks. runs S. west.
40.00 *Set temp. ¼ sec. cor.*
74.50 Leave swamp brs. N. & S.
80.32 Intersect N. & S. line at the corner to sections 15, 16, 21 & 22.
from which corner I run
West on a true line between sections 16 & 21
40.16 Set a post for ¼ sec. cor. from which
Tam. 8 N. 29 W. 38 lks.
Tam. 5 S. 60 E. 48 lks.
80.32 The corner to sections 16, 17, 20 & 21.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

North between sections 16 & 17.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Spruce 4 N. 25 W. 8 lks.
Tam. 3 S. 70 E. 16 lks.
80.00 Set a post for cor. to sects. 8, 9, 16 & 17 from which
Cedar 10 N. 45 E. 50 lks.
46 Cedar 4 N. 56 W. 38 lks.
Cedar 6 S. 70 W. 45 lks.
Tam. 10 S. 12 E. 34 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

East on a random line between sects. 9 & 16.
Var. 9 degrees 35 minutes E.

40.00 Set temp. ¼ sec. cor.
80.28 Intersect N. & S. line 48 lks. South of corner to sections 9, 10, 15 & 16 from which corner I run
S. 89 degrees 39 minutes W. on a true line between sections 9 & 16.
40.14 Set a post for ¼ sec. cor. from which
Cedar 5 N. 40 E. 15 lks.
Tam. 4 S. 80 E. 12 lks.
80.28 The corner to sections 8, 9, 16 & 17.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, cedar & spruce.
Undergrowth the same.

North between sections 8 & 9.
Var. 9 degrees 40 minutes E.

25.00 Leave swamp bears N. E. & S. W.
32.50 Creek 6 lks. runs east.
40.00 Set post for ¼ sect. cor. from which
Birch 10 N. 27 W. 35 lks.
Birch 14 N. 50 E. 26 lks.
80.00 Set a post for corner to sections 4, 5, 8 & 9 from which
Fir 6 N. 64 E. 18 lks.
Fir 4 N. 50 W. 26 lks.
Cedar 5 S. 41 W. 15 lks.
47 Birch 10 S. 20 E. 20 lks.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, cedar, tamarac-, aspen & maple.
Undergrowth, aspen & fir.

The line between sections 4 & 9 runs into "Cedar Island lake" in less than 80.00 chains, I therefore run it
East on a true line between sections 4 & 9.
Var. 9 degrees 35 minutes E.

12.10 Set a post on the west shore of Cedar Island lake for
Corner to fractional sections 4 & 9 from which
Fir 4 N. 65 W. 34 lks.
Birch 6 S. 26 W. 44 lks.
Land rolling. Soil 3d rate.
Timber: Birch, cedar, spruce, aspen, tamarac- & maple.
Undergrowth, fir & aspen.

North on a random line between sections 4 & 5.
Var. 9 degrees 35 minutes E.

6.40 Creek 10 lks. runs east.
40.00 Set temp. ¼ sec. cor.
80.24 Intersect north boundary 35 lks. east from the cor. to sections 4 & 5 from which corner I run
S. 0 degrees 15 minutes E. on a true line between sections 4 & 5.
40.24 Set a post for ¼ sect. cor. from which
Birch 14 N. 80 W. 42 lks.
Aspen 10 N. 30 E. 56 lks.
80.24 The corner to sections 4, 5, 8 & 9.
Land rolling. Soil 3d rate.
48 Timber: Birch, spruce, cedar, aspen, tamarac-, & maple.
Undergrowth, fir, aspen & alder.

JUNE 26, 1876.

Field notes of the meanders of "Cedar Island lake."

Begin at the corner to fractional sections 3 & 34, in the north boundary of the township, and run thence in sec. 3, as follows:
S. 38¼ W. 23.00 chains thence
S. 63 W. 13.00 chains thence
S. 82 W. 15.00 chains to the corner to fractional sec. 3 & 4, thence in fractional sec. 4, as follows:
S. 86 W. 10.00 chains, thence
S. 61½ W. 17.00 chains, thence
S. 71½ W. 3.20 chains, thence
N. 67½ W. 21.00 chains, thence
N. 10 W. 4.00 chains, thence
N. 73½ W. 7.50 chains, thence
S. 43½ W. 10.00 chains, thence
S. 25 W. 12.00 chains, thence
S. 13 E. 18.00 chains, thence
S. 21½ W. 17.50 chains
Creek 10 lks. runs E. into lake.
S. 10½ E. 6.10 chains to the corner to fractional sec. 4 & 9.
Thence in sec. 9 as follows:
S. 10½ E. 7.50 chains, thence
S. 35 E. 25.00 chains, thence
Creek 6 lks. runs N. E. into lake.
S. 67 E. 20.00 chains, thence
S. 72 E. 15.00 chains, thence
49 N. 84½ E. 8.00 chains, thence
N. 64½ E. 13.45 chains to the corner to fractional sec. 9 & 10.
Thence in sec. 10, as follows:
N. 59 E. 20.00 chains, thence
N. 42 E. 27.00 chains, thence
N. 75 E. 9.00 chains, thence
S. 47 E. 6.20 chains, thence
S. 19¼ E. 8.80 chains, thence
S. 49 E. 12.00 chains, thence
S. 68½ E. 12.00 chains, thence
N. 88 E. 8.70 chains, to the corner to fractional sections 10 & 11.
Thence in sec. 11, as follows:
N. 88 E. 6.25 chains, thence
S. 60½ E. 2.50 chains, thence
South 4.00 chains, thence
S. 48 E. 2.00 chains, thence
Stream 25 lks. runs south out of lake.
N. 58½ E. 5.00 chains, thence
N. 25 E. 10.00 chains, thence
N. 44¾ E. 5.00 chains, thence
N. 55 E. 27.60 chains, to the corner to fractional sec. 2 & 11.

Thence in sec. 2, as follows:
N. 44½ E. 5.00 chains, thence
N. 22 E. 13.00 chains, thence
N. 45 E. 12.00 chains, thence
N. 56½ E. 10.00 chains, thence
N. 38 E. 6.00 chains, thence
N. 7½ W. 7.00 chains, thence
N. 4¾ E. 17.00 chains, thence
N. 13 W. 5.00 chains, thence
50 N. 22¼ W. 8.00 chains, thence
N. 58 W. 13.00 chains, thence
S. 87¼ W. 10.00 chains, thence
S. 41 W. 15.00 chains, thence
S. 66½ W. 3.60 chains, thence
N. 75 W. 2.50 chains, thence
N. 52 W. 5.00 chains, thence
N. 19¼ E. 5.00 chains, thence
N. 35¼ W. 3.80 chains, thence
N. 78½ W. 5.50 chains, thence
N. 23 W. 3.20 chains, to the corner to fractional sec. 2 & 35 in the northern boundary of the township.
Land slightly rolling. Soil 3d rate. Timber, spruce, tam., birch, cedar, aspen, maple & pine.

JUNE 27TH, 1876.

North between sections 31 & 32.
Var. 9 degrees 30 minutes E.
40.00 Set a post for ¼ sec. cor. from which
Birch 6 N. 30 W. 10 lks.
Fir 4 N. 15 E. 20 lks.
Stream 25 lks. runs west.
57.00 Set a post for corner to sections 29, 30, 31 & 32, from
80.00 which
Aspen 3 N. 40 E. 12 lks.
Aspen 3 N. 70 W. 8 lks.
Aspen 4 S. 40 W. 16 lks.
Aspen 4 S. 10 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, tam., spruce, cedar, aspen & maple mostly killed by fire. Undergrowth, aspen, fir & alder.

---

51 East on a random line between sections 29 & 32.
Var. 9 degrees 35 minutes E.
27.50 Stream 25 lks. runs S. west.
40.00 Set temp. ¼ sec. cor.
52.50 Enter swamp brs. N. E. & S. W.
79.75 Intersect N. & S. line 33 lks. south of the corner to sects. 28, 29, 32 & 33.
from which corner I run

S. 89 degrees 46 minutes west on a true line between sections 29 & 32.

39.88 Set a post for ¼ sec. cor. from which
Fir 4 N. 28 W. 30 lks.
Spruce 5 S. 60 W. 18 lks.

79.76 The corner to sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Birch, spruce, tamarac-, aspen & maple, mostly burned.
Undergrowth the same & fir.

West on a random line between sections 30 & 31.
Var. 9 degrees 10 minutes E.

27.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ sec. cor.
80.46 Intersect west boundary 52 lks. south of cor. to sects. 30 & 31, from which corner I run S. 89 degrees 38 minutes E. on a true line between secs. 30 & 31.
40.46 Set post for ¼ sec. cor. from which
Cedar 12 S. 70 E. 25 lks.
Cedar 8 N. 15 W. 10 lks.
80.46 The corner to sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Spruce, birch, tam., aspen & cedar.
Undergrowth the same & fir.

---

52 North between sections 29 & 30.
Var. 9 degrees 20 minutes E.

22.50 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Tam. 10 N. 56 E. 11 lks.
Tam. 4 N. 80 W. 14 lks.
80.00 Set a post for corner to sections 19, 20, 29 & 30 from which
Cedar 4 N. 80 W. 25 lks.
Tam. 5 N. 42 E. 17 lks.
Tam. 8 S. 58 E. 25 lks.
Tam. 3 S. 71 W. 35 lks.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar & birch.
Undergrowth, the same & fir.

East on a random line between sections 20 & 29.
Var. 9 degrees 20 minutes E.

40.00 Set temp. ¼ sec. cor.
62.00 Creek 5 lks. runs south.
80.25 Intersect N. & S. line 68 lks. N. of cor. to sects. 20, 21, 28 & 29
From which corner I run

N. 89 degrees 31 minutes west on a true line between sections 20 & 29.

40.12 Set a post for ¼ sec. cor. from which
Tam. 5 N. 75 E. 80 lks.
Tam. 4 S. 42 W. 11 lks.

80.25 The corner to sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth the same.

---

53 West on a random line between sections 19 & 30.
Var. 9 degrees E.

40.00 Set temp. ¼ sec. cor.
45.00 Creek 10 lks. runs south.
80.45 Intersect W. boundary 37 lks. north of cor. to sections 19 & 30
From which corner I run
N. 89 degrees 44 minutes E. on a true line between sections 19 & 30.
40.45 Set post for ¼ sec. cor. from which
Spruce 10 N. 21 E. 34 lks.
Birch 4 S. 35 W. 50 lks.
80.45 The corner to sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tam., spruce, cedar & birch. Undergrowth the same.

JUNE 28, 1876.

North between sections 19 & 20.
Var. 9 degrees 20 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Spruce 8 N. 34 W. 40 lks.
Cedar 8 N. 65 E. 27 lks.
53.00 Creek 10 lks. runs S. west.
80.00 Set a post for cor. to sections 17, 18, 19 & 20 from which
Tam. 10 N. 51 E. 30 lks.
Tam. 12 N. 80 W. 46 lks.
Spruce 8 S. 10 W. 35 lks.
Tam. 14 S. 36 E. 60 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

---

54 East on a random line between sections 17 & 20.
Var. 9 degrees E.

40.00 Set a post for temp. ¼ sec. cor.
79.86 Intersect N. & S. line 52 lks. N. of corner to sects. 16, 17, 20 & 21
From which corner I run

N. 89 degrees 38 minutes west on a true line between sections 17 & 20.

39.93 Set post for ¼ sec. cor. from which
Spruce 4 S. 20 E. 65 lks.
Spruce 6 N. 58 W. 40 lks.

79.86 The corner to sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

West on a random line between sections 18 & 19.
Var. 9 degrees E.

40.00 Set temp. ¼ sec. cor.
70.00 Leave swamp brs. N. W. & S. E.
80.30 Intersect W. boundary 67 lks. S. of cor. to sects. 18 & 19.
From which corner I run
S. 89 degrees 31 minutes E. on a true line between sects. 18 & 19.
40.30 Set a post for ¼ sec. cor. from which
Cedar 10 N. 50 W. 41 lks.
Cedar 4 S. 62 E. 60 lks.
80.30 The corner to sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar & birch.
Undergrowth the same & alder.

---

55 North between sections 17 & 18.
Var. 9 degrees 20 minutes E.

27.50 Creek 6 lks. runs S. west.
40.00 Set a post for ¼ sec. cor. from which
Tam. 4 N. 12 E. 18 lks.
Tam. 3 N. 42 W. 16 lks.
80.00 Set a post for cor. to sects. 7, 8, 17 & 18 from which
Spruce 5 N. 50 E. 27 lks.
Spruce 6 N. 85 W. 14 lks.
Tam. 10 S. 38 W. 9 lks.
Cedar 10 S. 60 E. 15 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

East on a random line between sects. 8 & 17.
Var. 9 degrees E.

20.00 Creek 4 lks. runs south.
40.00 Set temp. ¼ sec. cor.
41.00 Leave swamp brs. N. W. & S. E.
61.20 Enter swamp brs. N. E. & S. W.
80.30 Intersect N. & S. line 60 lks. south of cor. to sects. 8, 9, 16 & 17.

From which corner I run
S. 89 degrees 34 minutes west on a true line between sects. 8 & 17.
40.15 Set a post for ¼ sec. cor. from which
Tam. 8 N. 20 W. 35 lks.
Spruce 6 S. 78 W. 45 lks.
80.30 Corner to sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, tam., cedar, birch & aspen.
Undergrowth the same.

---

56 West on a random line between sects. 7 & 18.
Var. 9 degrees E.
40.00 Set temp. ¼ sec. cor.
50.50 Leave swamp brs. N. E. & S. W.
79.60 Intersect W. boundary 30 lks. N. of cor. to sects. 7 & 18.
From which corner I run
N. 89 degrees 47 minutes E. on a true line between sects. 7 & 18.
39.60 Set a post for ¼ sec. cor. from which
Cedar 6 N. 28 E. 14 lks.
Cedar 10 S. 58 W. 19 lks.
79.60 The corner to sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, tam., cedar, birch & aspen.
Undergrowth the same & alder.

North between sections 7 & 8.
Var. 9 degrees 20 minutes E.
40.00 Set a post for ¼ sec. cor. from which
Tam. 3 N. 73 W. 18 lks.
Spruce 3 N. 22 E. 25 lks.
41.30 Leave swamp brs. E. & W.
60.00 Creek 6 lks. runs S. east.
80.00 Set a post for cor. to sections 5, 6, 7 & 8 from which
Aspen 10 N. 65 E. 37 lks.
Aspen 6 N. 40 W. 48 lks.
Aspen 7 S. 43 W. 45 lks.
Aspen 4 S. 70 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, spruce, tam., cedar & aspen.
Undergrowth the same & fir.
JUNE 29, 1876.

---

57 East on a random line between sects. 5 & 8.
Var. 9 degrees 20 minutes E.
40.00 Set temp. ¼ sec. cor.
80.32 Intersect N. & S. line 38 lks. S. of cor. to sects. 4, 5, 8 & 9.
From which corner I run

S. 89 degrees 44 minutes W. on a true line between sects. 5 & 8.

40.16 Set a post for ¼ sec. cor. from which
Birch 7 N. 63 W. 36 lks.
Fir 5 S. 25 E. 19 lks.

80.32 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, cedar, spruce, aspen, tam., & maple.
Undergrowth aspen, fir & alder.

West on a random line between sections 6 & 7.
Var. 9 degrees 15 minutes E.

40.00 Set temp. ¼ sec. cor.

79.65 Intersect W. boundary line 46 lks. N. of cor. to sects. 6 & 7
From which corner I run N. 89 degrees 40 minutes E. on a true line between sects. 6 & 7.

39.65 Set a post for ¼ sec. cor. from which
Cedar 18 S. 80 W. 20 lks.
Birch 12 N. 32 W. 34 lks.

79.65 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, aspen, cedar, spruce & maple.
Undergrowth, aspen, fir & alder.

North on a random line between sections 5 & 6.
Var. 9 degrees 30 minutes E.

58

40.00 Set temp. ¼ sec. cor.

80.33 Intersect N. boundary line 27 lks. west of cor. to sects. 5 & 6.
From which corner 1 run
S. 0 degrees 12 minutes W. on a true line between sections 5 & 6.

40.33 Set a post for ¼ sect. cor. from which
Birch 14 S. 60 E. 21 lks.
Birch 10 N. 72 W. 26 lks.

80.33 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, cedar, aspen & maple.
Undergrowth the same, fir & alder.

Field notes of the meanders of a lake in section 18.

Beginning at the corner to fractional sects. 13 & 18 on the north shore of the lake, and run thence in sec. 18, as follows:

N. 72 E. 4.00 chains.
N. 15 E. 9.00 chains.
N. 42½ E. 8.00 chains.

S. 81½ E. 10.00 chains.
S. 52½ E. 8.00 chains.
S. 19½ E. 16.00 chains.
S. 9 W. 8.00 chains. A creek 8 lks. runs N. W. into lake.
S. 44 W. 2.00 chains.
S. 73½ W. 6.00 chains.
S. 63 W. 15.00 chains.
S. 69 W. 5.00 chains.
S. 77 W. 7.40 chains to the corner to fractional 13 & 18 on south shore of the lake.
The land about this lake is generally low and wet.
3rd rate.
59 Timber: Spruce, tamarac-, cedar, birch & pine.

JUNE 30TH, 1876.

General Description.

There is no land in this township above 3d rate quality, and a very large portion of the whole is swamp land and very wet. The timber is spruce, tamarac-, birch, cedar, aspen & maple, with scattering pine about the lake in the northern portion. Nearly all the timber, except that in the northern tier sections, has been killed by fire, and much of it has fallen. On all the high land there is a dense growth of aspen, fir and Norway pine, from 6 to 20 feet high.

List of Names.

A list of the names of the individuals employed to assist in running, measuring- or marking the lines and corners described in the foregoing field notes, of township No. 57 north of the base line of range No. 17 west of the 4th principal meridian, showing the respective capacities in which they acted.

Frank D. Howe, chainman.
B. Martin, chainman.
Orrin N. Parker, axman.

We hereby certify that we assisted Henry S. Howe, deputy surveyor, in surveying the sub-division & meander lines of township 57, north of the base line, of range No. 17, west of the 4th principal meridian, and that said township has been in all respects, to
60 the best of our knowledge and belief, well and faithfully surveyed, and the boundary monument planted, according to the instructions furnished by the surveyor general.

FRANK D. HOWE, *Chainman.*
B. MARTIN, *Chainman.*
ORRIS N. PARKER, *Axman.*

Subscribed and sworn to by the above named persons, before me, a notary public, for Ramsey county, in the State of Minnesota, this 1st day of July, 1876.

HENRY S. HOWE,
Notary Public, Minn.

[NOTARIAL SEAL.]

I, Henry S. Howe, deputy surveyor, do solemnly swear that in pursuance of a contract with James H. Baker, surveyor of the public lands of the United States, in the State of Minnesota, bearing date the 26th day of April, 1876, and in strict conformity to the laws of the United States, and the instructions furnished by the said surveyor general, I have faithfully surveyed the sub-division line and meanders of township No. 57, north of base line, of range No. 17, west of the 4 principal meredian, in the State aforesaid, and do further solemnly swear that the foregoing are the true and original field notes of such survey.

HENRY S. HOWE,
Deputy Surveyor.

61 Subscribed by said Henry S. Howe, deputy surveyor, and sworn to before me, a notary public, for Blue Earth county, in the State of Minnesota, this 25th day of July, 1876.

ROB'T H. ROSE,
Notary Public, Minn.

[NOTARIAL SEAL.]

SURVEYOR GENERAL'S OFFICE,
ST. PAUL, *Aug.* 19, 1876.

The foregoing field notes of the survey of the sub-division and meander lines of township No. 57, N. range, No. 17 W. 4th prin. mer. executed by Henry S. Howe, under his contract, dated April 26, 1876, in the month of June, 1876, having been critically examined, the necessary corrections and explanations made, the said field notes & the surveys they describe are hereby approved.

J. H. BAKER,
Surveyor General.

I, P. H. Kirwan, U. S. surveyor general, of Minnesota, do hereby certify that I have carefully compared the foregoing copy of the field notes of the survey of township 57, north, range 17 west, 4th meridian, Minnesota, executed by Henry S. Howe, deputy surveyor, with the original field notes of said survey, on file in this office, and that the same is a true and correct copy of, and transcript from said original field notes.

Surveyor general's office, St. Paul, Minn., January 16, 1896.

(Signed) P. H. KIRWAN,
Surveyor General.

62 EXHIBIT D.

E.
J. H. B.
M. L. 115675.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 2, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter dated April 18, 1879, from the U. S. surveyor general of Minnesota, addressed to the Commissioner of the General Land Office; copy of letter from the U. S. surveyor general of Minnesota, dated June 2, 1879, addressed to the Commissioner of the General Office and copies of papers inclosed therewith, viz: affidavit of John McGuire, sworn to May 1, 1879, and letters dated May 5, 1879, and May 31, 1879, from the receiver of the U. S. land office at Duluth, Minnesota, addressed to the U. S. surveyor general at St. Paul, Minnesota, relative to the survey of T. 57 N. R. 17 W., Minnesota; also copy of letter dated June 11, 1879, from the Commissioner of the General Land Office addressed to the U. S. surveyor general of Minnesota, are true and literal exemplifications of the originals of said letters from the U. S. surveyor general and of the inclosures received with his letter of June 2, 1879, and of the official record of said letter from the Commissioner of the General Land Office in this office.

In testimony whereof, I have hereunto subscribed my name
63 and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of the General Land Office.

[Seal of United States General Land Office.]

(Internal Rev. stamp canceled.)

EXHIBIT D—Continued.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
ST. PAUL, MINN., *April 18th*, 1879.

Hon. J. A. Williamson, Com'r Gen'l Land Office, Washington. D. C.

SIR: I have the honor to state that I am informed by the register of the local land office at Duluth that complaints have been made by explorers and others, that the surveys executed by H. S. and F. D. Howe in former years, were very imperfectly made, and that in some cases, no lines or corners can be found.

Affidavits of the facts in the case, will very soon be procured, and when received will be forwarded to you, for your action, in the mat-

ter. In the meantime, I would suggest that approval of their surveying accounts recently forwarded to you be suspended.

Very respectfully, J. H. STEWART,
Surveyor General.

64 EXHIBIT D—Continued.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
ST. PAUL, MINN., *June 2d*, 1879.

Hon. J. A. Williamson, Com'r Gen'l Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith an affidavit made by John McGuire in relation to the survey of township No. 57, north of range No. 17 W. made by Henry S. Howe in 1876, and also two letters from Mr. T. H. Pressnell, receiver of U. S. land office at Duluth, relative to statements made by L. B. Johnson, relative to said survey. From the letter of Mr. Pressnell dated May 31st, it appears that there is great doubt as to the correctness of the statements set forth in Mr. McGuire's affidavit and that they may have been entirely mistaken as to the locality in which their explorations were made.

I would therefore interpose no further objections to the payment of the account of Messrs. H. S. and F. D. Howe, for the sum of $1057.96–100 which was sent you by my predecessor on the 12th of April last.

I deem it, however, desirable that an examination should be made, of the Messrs. Howes, surveys not only in said tp. 57, R. 17, but also of their surveys recently made, under contract dated July 25, 1878, and would respectfully request authority to employ
65 a competent surveyor to make such examination.

Very respectfully, J. H. STEWART,
Surveyor General.

EXHIBIT D—Continued.

Personally appeared before me T. H. Pressnell, receiver of public moneys, at Duluth, Minnesota, John McGuire, who, being duly sworn deposes and says that he is familiar with township No. 57 N. of range 17 W. in St. Louis county, Minnesota, that during the month of May, 1878, he in company with L. B. Johnson, visited said township for the purpose of exploring it for pine lands; that they traversed the entire west half of the said township, starting in at the south-west corner therefor going up the west line until they reached a certain lake situated in sec. 18 of said township and sec. 13–57–18; from thence they traveled north-east through sections 18 and 17; thence north-west through what they supposed to be sec. 8, and part of sec. 6, thence they went east until they reached a lake which from the Government plat on file in the U. S. land office, at Duluth, Minn., appears to be located in sections 2, 3, 4, 9, 10 and 11 of said

township 57 N. of R. 17 W.; thence they followed the lake around its west and south boundaries in search of meander corners, none of which they were able to find; that they searched for a stream which the aforesaid plat shows to leave the lake in lot 3, sec. 11, it being their purpose to follow said stream down through the said town and to its junc-
66 tion with the St. Louis river in the south-east corner of township 57, north of R. 18 W., but they found no such outlet, from the said lake; that they did find an outlet from said lake in what they supposed to be section 9; and that the said stream flowed into a lake situated in what they considered was secs. 9, 10, 15 & 16, that it left said last mentioned lake (which they calculated was about half a mile in width) at a point in what they supposed was sec. 16, and flowed westerly into another lake, situated, as they calculated, in secs. 17 and 18, the dimensions of which are about one and one-half miles; and from thence it flowed into the lake above described as located in sects. 18–57–17 and sec. 13–57–18; that they could find no such stream as the one represented on the plat of said towp. 57–17 as running diagonally through said townp. from sec. 11 through secs. 15, 22, 28 and 31; that they were unable to find any section corners or quarter posts in the said west half of said township, nor any meander posts around any of the above described lakes; and there actually exists no such swamp as is represented by said plat in secs. 10, 15, 16, 17, 18, 19, 20, 21, 28, 29 and 30 but that the said sections are composed of hard land upon which there is a scattering growth of Norway pine and other timber, with the exception of sec. 30 and a part of sec. 19 which is swamp; that the lake is represented by said plat to be located in secs. 2, 3, 4, 9, 10 & 11 is not near as large as is represented by said plat.

Deponent further deposing says that both himself and Mr. John-
67 son are woodsmen and explorers by occupation, and that they have operated in this section of country during the past five years, and that they are familiar with the methods of finding and tracing lines of survey; and that if the said township 57–17 had been surveyed as is represented by the above described plat they could have found the lines without difficulty.

Dated, Duluth, Minn., May 1, 1879.

JOHN McGUIRE.

Sworn to and subscribed before me this 1st day of May, A. D. 1879.

T. H. PRESSNELL, *Receiver.*

EXHIBIT D—Continued.

R. C. Mitchell, register. T. H. Pressnell, receiver.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *May* 5, 1879.

Hon. J. H. Stewart, surveyor gen'l, St. Paul.

SIR: Referring to your letter of April 21, 1879, requesting certain affidavits, I herewith enclose an affidavit of John McGuire, Esq., and

have to say that Mr. L. B. Johnson, to whom reference is made in said affidavit and who some time since informed me that he would make an affidavit of similar purport, when called upon to do so,—
68 is at present exploring the towns surveyed by Mr. Howe last summer and will not return until about two weeks hence. When he arrives, I will take his affidavit and forward it to you.

Very respectfully, your ob't serv't,

T. H. PRESSNELL.

EXHIBIT D—Continued.

R. C. Mitchell, register. T. H. Pressnell, receiver.

UNITED STATES LAND OFFICE,
DULUTH, MINN, *May* 31, 1879.

Hon. J. H. Stewart, sur. gen'l of Minnesota, St. Paul, Minn.

SIR: Referring to my letter of May 5th, with which I transmitted the affidavit of John McGuire, relative to manner in which tp. No. 57 N. of R. No. 17 W., was surveyed, I have now to say that the Mr. L. B. Johnson, therein named has just returned from an extended exploring trip on the headwaters of the St. Louis river, and says that among the other towns he passed through was 57–17, and that as a result he finds the survey of said town much better than supposed it was on the first occasion, and that this time he had no difficulty in tracing the lines in the north half of the township, but that he did not go over the south half of the town this trip. He also says that had he been here when Mr. McGuire made the affidavit that he (Johnson) would have also signed it, but he now
69 knows that when Mr. McGuire and he were there that they were not in the portion of the township which they supposed they were, and consequently declines to make an affidavit of same purport as that of Mr. McGuire's.

Very respectfully, your ob't serv't,

T. H. PRESSNELL, *Receiver.*

EXHIBIT D—Concluded.

J. W. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 11, 1879.

J. H. Stewart, Esq., U. S. surveyor general, St. Paul, Minn.

SIR: The surveying account of H. E. and F. D. Howe, amounting to the sum of $1057.96–100, received with your predecessor's letter of April 12, 1879, is transmitted to the Treasury for payment on this day, with request that draft be sent to payees as directed.

Referring to your letter of the 2d inst., inclosing affidavits of John

McGuire and letters of Mr. T. H. Pressnell, receiver of U. S. land office at Duluth, Minn., in relation to alleged irregular surveys by Messrs. H. S. and F. D. Howe and requesting that you may be authorized to employ a competent surveyor to make exam-
70 inations of their surveys, I have to state that the statements of Mr. McGuire having boen made from mere conjecture and afterwards found by Mr. L. B. Johnson to be incorrect, and the apportionment for examinations of surveys having been exhausted, I have to refuse your request.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

DEFENDANT'S EXHIBIT 1.

"E."
M. L. 77858 J. S. W.
J. B. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 20, 1895.

I, E. F. Best, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter from the Secretary of the Interior to the Commissioner of the General Land Office relative to the application of G. A. Burns, *et al.*, for the survey of certain unsurveyed land in secs. 2, 3, 4, 9, 10 and 11, T. 57, N. R. 17 W., 4th P. M., Minnesota, is a true and literal exemplification of the original of said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) E. F. BEST,
71 *Acting Commissioner of the General Land Office.*

[Seal of United States Genral Land Office.]

EXHIBIT 1—Continued.

Vol. 20, No. 279.

E. F. B.
P. J. C.
F. L. C.
V. B.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *January* 18, 1895.

In re G. A. BURNS ET AL., Re-survey.

The Commissioner of the General Land Office.

SIR: This is an application by G. A. Burns and six others, who allege that they are actual settlers upon a tract of unsurveyed land belonging to the United States, and included in sections 2, 3, 4, 9, 10

and 11, in township 57, range 17 west, 4th P. M., Minnesota, which tract was either fraudulently or by error included in the meander of Cedar Island lake, called also Ely lake, located in said sections and represented in the official plat of such survey to be a part of said lake covered by its waters, and they request that the tract may be surveyed, that they may procure title thereto. It is also sug-
72 gested by counsel in their brief that a hearing be ordered for the purpose of determining the facts alleged.

Your office, by letter of October 6, 1893, denied the petition, whereupon the petitioners prosecute this appeal, assigning error as follows:—

1. In holding that the lands involved in this appeal have been conveyed by Government.

2. In holding that the rule announced in Mitchell *vs.* Smale, 140 U. S., 413, governs the decision in this case, as the lands here involved are no part of a former lake bed.

3. In denying the petition on the ground that no evidence was produced that the outlet of Cedar Island lake was not dammed at the time of the Government survey in 1876.

4. In holding that the application is one to place the petitioners in possession of lands *outside* of official meander lines of Cedar Island lake.

5. In holding that an order for a survey of the lands in question, or a hearing to establish the truth of the matters set up in the affidavits, would be a cause of vexatious litigation which ought not be created or sanctioned.

6. In disallowing any relief to the petitioners under their application.

7. In denying petitioners such relief under their application as will give them a standing in court to determine adverse claims, if any, to the lands in question.

8. If the order appealed from be a discretionary order, the Commissioner erred in disallowing the application, because such disallowance was an abuse of discretion.

73 The survey of this township was made by H. E. Howe, United States deputy surveyor, in 1876; approved by the surveyor general August 7, 1876.

A similar application was made by the same parties through the surveyor general of Minnesota in May, 1892; that was also rejected by your office letter of October 7, 1892.

The surveyor general in transmitting this petition, says:—

"A great deal of complaint has come to this office in regard to the survey of this town, especially this portion of it, and I find by referring to the files of the office, it is no new matter.

The plat was transmitted to your office April 12, 1879, by Hon. J. H. Baker. On April 18, 1879, Hon. J. H. Stewart in a letter addressed to the Hon. Commissioner, asked that action be suspended in approving survey until affidavits could be forwarded.

On June 2, 1879, an affidavit of John McGuire and letters of F. H. Pressnell, receiver, were forwarded and in this letter Surveyor-Gen-

eral Stewart withdrew his objections to the approval of the survey, but requested that an examination of said survey be made. This request was denied by the Hon. Commissioner in his letter E to this office of June 11, 1879. I find no record in this office of the formal approval of this survey."

There are quite a number of affidavits presented by the petitioners outside of their own, some of them accompanied with plats of the land and lake, which were made by surveyors and engineers,
74 woodsmen and others familiar with the surrounding country, and skilled in tracing lines of Government surveys and meanderings. I have carefully examined all these, and find their substance fairly and substantially set forth in counsel's brief, and I cannot do better than quote the same in full, omitting the names of the affiants:

"The affidavits show that, instead of covering an area of 1,900 acres, Ely, or Cedar Island lake is a body of water of about 650 or 700 acres only; that it is a permanent, deep and navigable lake, in some places running to a depth of sixty-five feet, having high and steep banks entirely surrounding it except at its outlet, rising in places to 35 feet above the water, and which are covered with a heavy growth of pine, fir, cedar, birch and other trees; that within the meander lines of said lake, as that line is shown on the Government plat of the township, lie 1,202 acres of fine, high, timber-land which has never been a part of the lake, having trees down to the water's edge, of more than four feet in diameter; that in 1878, two years after the alleged Government survey by Howe, the character of the lake and its surroundings were just what they are to-day, and, at that time, no monuments, marks or blazings alleged to have been made by Howe could be found by diligent search, and that none of said 1,202 acres of land surrounding the lake was formed by accretion due to receding waters; that a rise of many feet in the level of the lake would, owing to the steep banks, cover no appreciable quantity of land; that the outlet of the lake is the only low land surrounding it, and that, from the nature of the topography of the township to the southward, there
75 could be no rise in the lake; that the entire township south of the lake is lower than the banks of the lake and the land in question, so that if the lake had ever covered the land shown by the Howe survey within the meander line as delineated by him, the whole township would have been submerged and have formed one single lake; that, lying southerly and westerly of Ely lake, there are five other deep, navigable and permanent lakes, three of which are almost as large as Ely lake, but none of which is shown by the Howe survey; that, at divers times since 1878, careful and systematic search has been made throughout said township 57 for the surveyor's monuments and blazings referred to particularly in the field notes of said Howe, but that, in no instance, has a single monument or marking been found; save on the boundary line of the township, and those were distinct and readily discoverable; that no meander post or marking, either on the line shown on the Gov-

ernment plat, or at any other point about Ely lake, exists or has ever been found, though diligently sought after by wholly disinterested parties; that the outlet of the lake is shown by the pretended survey to leave the lake in section 11, and to run south-westerly, leaving the township in the western line of section 31, but, in fact, the outlet leaves the lake in section 2 and runs southeasterly, and empties into the St. Louis river in the southwest corner of section 25; that no such stream as the outlet shown by the Howe survey exists; that some of the section and quarter-section posts established by the field notes of Howe, and said to be blazed on certain described trees, are, in fact, estab-
76 lished at points in deep and permanent lakes where water is thirty feet deep; that there has been long known and used by the Indians a canoe route from the Saint Louis river through the chain of lakes referred to up into Ely lake; that in Ely lake are certain rocky islands, not shown by the Howe survey, rising just above the water, and upon which is a heavy growth of pine and other timber which cannot grow in water and which is of an age long antedating the alleged survey of 1878."

It is stated in your said office letter that the records of your office show that the lands in the sections named immediately bordering on the official meanders of the lake have all been disposed of; "mainly to the State of Minnesota, as swamp and over-flowed lands." Your office therefore concluded that the question as to the ownership of the lands between the meander line and the shore line was settled by the Supreme Court of the United States in Mitchell *vs.* Smale (140 U. S., 413); and Hardin *vs.* Jordan (*Id.*, 401).

The contention of counsel is that the doctrine announced in those cases is not applicable to the one at bar, in that there is no question of riparian ownership here; there has been no recession of the waters of the lake; hence no accretions beyond the meander line, but it is insisted that the land between the meander line and the shore line is not, and never has been, a lake bed, and by reason of the fraudulent survey, an area of about 1200 acres of land has been included in the lake that is and was actually Government land, and subject to homestead entry as such at the time the official map is al-
77 leged to have been made; that the rule that attaches accretion or reliction to the riparian title cannot be applied to this case, for the reason that meander lines were not run to and connected with the true shore line, but were so described as to leave a large area between these two points.

I am disposed to think this contention of counsel is sound. The showing made here is amply sufficient, in my judgment, to justify the belief that the survey by Howe was a palpable fraud upon the Government; that there was no attempt made to make the meander lines conform to the shore line; and that Government land does and did exist at the time the survey was made, reported and approved.

Under these facts, as they appear, I do not think the doctrine of riparian ownership is applicable to the question involved.

(See Granger *vs.* Swart, 1 Woodworth's C. C. Rep., 88; Lammers

vs. Nissen *et al.*, 4 Neb., 245, affirmed by the United States Supreme Court, Book 25, Lawyer's Co-op. ed., 562; Grim *et al.*, *vs.* Jeffrey, 75 Iowa, 20; and Whitney *et al. vs.* The Detroit L. Co., 78 Wis., 240.)

It will be observed that in 1878, two years after the survey, there was an entire absence of either meander posts, section or quarter-section corners, or any witness trees at the points called for in the field notes, except on the north and east boundaries of the township. While the *ex parte* statements submitted are not sufficient in themselves to warrant an order for a re-survey, yet they are deemed sufficient to require a hearing to determine whether the physical
78 facts actually exist on the ground, and also to establish the alleged fraud in the survey. This determination renders it unnecessary to discuss at this time any other question suggested.

Your judgment is therefore reversed, and a hearing is ordered. Notice of this hearing should be given to the owners of lots abutting on the meander line of the original survey.

The papers transmitted by your office letter "E" of December 15, 1893, are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

DEFENDANTS' EXHIBIT 2.

116229

1895

J. B. S. F. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 14, 1895.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of an official letter from the Commissioner of the General Land Office, dated October 31, 1895, addressed to the surveyor general for Minnesota, directing him to contract for the survey of certain lands in township 57 north, range 17 west, 4th principal meridian, is a true and literal exemplification of the official record of said letter, on file in this office.

79 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) S. W. LAMOREUX,
Commissioner of the General Land Office.

[Seal of United States General Land Office.]

EXHIBIT 2—Continued.

E.
J. B. S.
94015–1895. F. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 31, 1895.

(Address only the Commissioner of the General Land Office.)

The U. S. surveyor general, St. Paul, Minnesota.

SIR: Referring to the records and papers in the matter of the hearing in the petition of C. A. Burns, *et al.*, received with your letter dated September 9, 1895, an application for an oral argument by Copp and Luckett, attorneys, for opposing claimants, was allowed, and the hearing was set for October 23 last passed. At said hearing Mr. John R. Van Derlip appeared in behalf of the petitioners, and Copp and Luckett, attorneys for Murphy, *et al.*, were present,
80 and submitted arguments on certain legal points involved in the case.

After a full presentation of views by the attorneys for contestants, I concluded that a survey should be made of the public lands lying between the pretended old meander line of 1876, and the shore line of Cedar Island lake, in township 57 north, range 17 west, 4th principal meridian, State of Minnesota.

Therefore, you will enter into a contract with a surveyor of integrity and ability, to survey the public land designated above; the expense of said survey will be chargeable to the appropriation for the surveys of public lands for the current fiscal year.

Briefly stated, said survey will require:

1. Re establishment of certain section, quarter section and meander corners on the north boundary of the township (5 N., R. 17 W.)

2. The temporary establishment of the corners of:

Sections 1, 2, 11 and 12;
Sections 11, 12, 13 and 14;
Sections 10, 11, 14 and 15;
Sections 9, 10, 15 and 16;
Sections 4, 5, 8, and 9; and the quarter section corners between Sections 8 and 9, and 9 and 10.

3. The establishment of permanent meander corners, and the survey and permanent marking of the meander line of Cedar Island lake as given by the original field notes of Henry S. Howe, U. S. deputy surveyor, approved by the surveyor general for Min-
81 nesota, August 19, 1876. For the sake of brevity and definite description, said established meander line will be known and described as the old meander boundary, it being the *boundary* between the patented land and the public land to be surveyed as herein provided for.

4. The establishment of proper *permanent* meander corners at ordinary high water mark on the shore of Cedar Island lake, and the meandering of said shore line, *on the ground*, at ordinary high water mark.

5. The subdivision of all lands between the old meander boundary and the ordinary high water mark of the lake.

The surveys specified in the first three of the above paragraphs will be made to conform strictly to the original field notes of said surveys referred to in paragraph 3, while all surveys on the lake side of the "old meander boundary," will be made as directed by the "Manual of 1894."

It is evident that the "old meander boundary," when surveyed according to the original field notes, will not close on the meander corners. To provide for this contingency, you will please give in the special instructions, definite and detailed instructions (and an example illustrative of the same), to guide the deputy. This is a subject not mentioned or even referred to in the manual, or in any of the text books in general use; and, as the requisite instructions for the execution of the work will require an unusual application of well known principles, it is possible your office assistants
82 may be without the necessary information to prepare instructions which will pass a critical examination in this office and receive its approval.

If you have any doubts on this point, it may be well to apply to this office for the method to be employed and additional instructions.

You will please acknowledge receipt of this communication.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

Due service of the within proposed case by copy is hereby admitted at Duluth, Minn., this 20th day of Sept., 1901.

JOHN R. VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

83 *Findings.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
G. A. BURNS and MARY A. BURNS, Defendants. }

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

The above entitled actions duly came on for trial before the undersigned, one of the judges of the above named court, without a jury, in their regular order upon the calendar for the March, 1901, general term of said court.

Messrs. John G. Williams and Billson, Congdon & Dickinson appeared for the plaintiff, and Messrs. Wilson & Van Derlip and R. R. Briggs appeared for the defendants.

By stipulation of counsel, the court duly ordered that said actions be tried as one, and they were so tried.

After careful consideration of the facts stipulated by the
84 respective parties in open court, and of the allegations and admissions of the pleadings, and of the argument of counsel, I find the following:

Facts.

1. The plaintiff is a corporation duly organized and existing under the laws of the State of Minnesota, and the defendants in each of the actions above entitled are husband and wife.

2. In 1876, township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, was ordered by the General Land Office of the United States, to be surveyed, and a contract for the survey thereof was made by the U. S. surveyor general of the State of Minnesota with one H. S. Howe, who, by said contract, was constituted a deputy United States surveyor for said purpose. Under said contract, said Howe was required, and undertook and agreed to survey said township, to run out all section lines, and to set posts making all section and quarter sections corners throughout said township where the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within said township.

3. Thereafter said Howe ran and marked the exterior lines of said

township, except the south township line, which had been previously surveyed, and set posts at all section and quarter section corners on said three exterior lines. He also set a meander post upon the north line of said township as surveyed by him, where said line running west from the northeast corner of said township first encountered the shore of Ely lake, or, as it is some times called, Cedar Island lake.

4. No survey of the interior of said township was ever made, and no section lines within said township were ever run by said Howe, with the possible exception of the west line of section thirty-six (36) thereof, and no section or quarter section corners were ever located, established or marked by him (with the possible exception of the northwest corner of section 36 aforesaid), and none of the streams or permanent lakes (of which there were several) within said township were meandered by him, and no posts of any description were ever set, nor any lines or bearing trees ever blazed, within said township, with the possible exception of a corner post at the northwest corner of said section 36.

5. Said Howe made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey of said township made by him under said contract, purporting to give the length and directions of all interior section lines in said township, the location of all section and quarter section posts, and the bearing trees thereof, the character of the soil and timber in said township, and all other data and information required by the statutes of the United States and the rules of the United States General Land Office to be ascertained and reported by deputy surveyors in due course of making surveys of public lands.

6. With the exception of the description of the survey of the three exterior boundary lines of said township actually run by him, said field notes returned by said Howe were imaginary and fictitious, and the purported facts and data contained therein were not based upon any personal knowledge or inspection of the interior of said township, and were, in fact, false and erroneous.

7. From said purported field notes, it appeared that there existed in the northerly part of said township, lying in sections 2, 3, 4, 9, 10 and 11 thereof a lake known as Ely lake, or Cedar Island lake, with a surface area, as indicated by said field notes, of about eighteen hundred (1800) acres; in fact, instead of having an area of about eighteen hundred acres, said lake then was and still is a body of water not exceeding eight hundred (800) acres in area. It is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof. Said lake does not, in fact, touch section 11 at all, and covers only an area of very small extent (less than one-half of a forty-acre tract) in the southeast corner of section 4. Between the actual water line of said lake and the meander line thereof, as returned by the purported field notes of said Howe, there were at the time of the survey, and still are, at least one thousand (1,000) acres of high, tillable land, which has never been a part

of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down to the water's edge.

8. The field notes and report of survey made and filed by said Howe were approved by the surveyor general for the district of Minnesota, August 7th, 1876, and a plat of said township was
87 made in accordance with said purported field notes under the direction of said surveyor general and was approved by him on said 7th day of August, 1876, and a duly certified copy thereof was transmitted by him to the proper local U. S. land office on the 24th day of August, 1876, and another duly certified copy of the same was by him forwarded to the General Land Office of the United States, and filed therein August 23rd, 1876, and was by that office accepted as representing a correct survey of said township and as the official plat thereof. Such survey and plat of said township were the only ones ever made by or under the authority of the United States Government. [A true and correct copy of said township plat is hereto annexed and marked "Exhibit A."]

["Exhibit B," hereto attached, correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876, when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions.]

9. Since the spring of 1892, the defendants have been in actual and continuous occupancy of a portion of the land lying between the meander line described and returned by said Howe in his said purported field notes, and as located upon the Government plat of said township, and the actual water-line of said lake. Said
88 occupancy has been under the claim that the lands occupied by said defendants were and are unsurveyed Government lands subject to homestead entry, and that they have not been patented by the Government. The defendants have made valuable and lasting improvements upon the lands occupied by them respectively.

10. According to the plat of said township, the land in section 4 was divided into eight fractional Government lots, lots 1, 2, and 8 comprising all of the land in the east half of said section, containing an aggregate of 122.3 acres, and lots 3, 4, 5, 6 and 7 containing an aggregate of 182.80 acres, comprising all of the land in the west half of said section.

11. Between December, 1879 and March, 1887, all of said Government lots [and all the surveyed lands within said township] were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands, and by patents containing the usual clause, "according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general." By divers mesne conveyances from said patentees, the title to said lots 3, 5, 6 and 7, containing according to said plat

and to the patents of said lands, the following quantities of land, respectively: Lot 3, 50.37 acres; lot 5, 34.75 acres; lot 6, 30.5 acres; and lot 7, 25.25 acres; became vested in the plaintiff in the year 1891 and prior to the commencement of these actions; and the plaintiff is still the owner thereof, and, as such owner, has within the boundaries of said lots, as shown upon said plat, and
89 within the meander line of said lake described in said field-notes, the full quantity of land above described as contained therein.

The title to said government lots one (1) and eight (8) (which are the only lots in the east half of said section 4 apparently bounded by said lake) was conveyed by Government to certain patentees, and the patent title thereafter became vested in Simon J. Murphy and others, by whom a quit-claim deed was executed and delivered to the plaintiff in the year 1892, prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff that part of the southeast quarter of said section 4 lying southerly and westerly of a line drawn from the center of said section to the southeast corner thereof, and also all the interest of said grantors, in the west half of said section. At the same time, the plaintiff executed and delivered to said Murphy and others a quit-claim deed purporting to convey to them that part of the east half of said section 4 lying northerly and easterly of a line drawn from the center of said section to the southeast corner thereof.

12. If the side lines of said lot one (1) were produced and extended in straight lines southerly from the southern boundary of said lot, as shown upon the Government plat and as herein found and determined, to the said Ely lake, within said section 4, and the said lot were so extended, it would in that event appropriate substantially all the frontage of said lake within said section, and would then contain about one hundred and thirty-nine (139) acres of land.

90 If the side lines of said lot eight (8) were similarly produced and extended in straight lines southerly from its southern boundary, as shown upon the Government plat and as herein found and determined, to the southern boundary of said section, and the said lot was so extended, in that event the east line of said lot would touch said Ely lake in said section 4, and [about one-third of a mile of lake frontage] would then be contained in said lot, and said lot would then contain about one hundred and six acres of land.

If the side lines of said lot three (3) were produced and extended in straight lines southerly from its southern boundary, as shown upon the Government plat, and as herein found and determined, and the said lot was so extended to the southerly boundary of said section 4, then in that event the said lot would not touch said Ely lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty acres of land; neither would said lines nor said lot reach said lake, no matter how far extended.

If the side lines of said lot five (5) were produced and extended easterly from the eastern boundary of said lot, as shown upon the

Government plat, and as herein found and determined, to the eastern boundary of said section 4, the northern line of said lot following the old meander line of said lake and the southern line of said lot being produced and extended in a straight line, and said lot was so extended, then in that event the said lot would not touch
91 said Ely lake, nor would there be any lake frontage thereon, and said lot would contain about one hundred and twelve (112) acres of land.

If the side lines of said lot six (6) were produced and extended in straight lines easterly from the eastern boundary of said lot, as shown upon the Government plat and as herein found and determined, to the eastern boundary of section 4, and said lot was so extended, then in that event the said lot would not touch said Ely lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty (160) acres of land.

If the side lines of said lot seven (7) were produced and extended in straight lines easterly from its eastern boundary, as shown upon the Government plat and as herein found and determined, to the eastern boundary of said section 4, and the said lot was so extended, in that event the south line of said lot would touch said Ely lake, and a few feet of lake frontage would then be contained in said lot, and said lot would contain about one hundred and thirty-nine (139) acres of land.

I further find that it would be impossible to extend said lots within their respective side lines, as above specified, without instant and irreconcilable interference with each other, and that no one of said lots has any prior or superior right over any of the others to be so extended.

[13. That prior to the patenting of any of the lands in this township, an affidavit made by one claiming to know the facts was forwarded through the receiver of the local land office and the surveyor general of Minnesota to the Commissioner of the General
92 Land Office at Washington, wherein were various statements tending to show that what purported to have been a survey of said township made by said Howe was, as to the northerly and westerly portions thereof and including the lands in question, false and fictitious; that transmitted therewith were two letters from said receiver of the local land office and one from the surveyor general of Minnesota, tending to discredit the affidavit in question and to indicate that the statements therein made were based upon mistake; that at the time said affidavit and communication were transmitted, as aforesaid, the surveyor general of Minnesota proffered a request that a competent surveyor be employed to examine the surveys made by said Howe, including the lands in question; that upon consideration thereof the Commissioner of the General Land Office declined to grant such request.]

Conclusions of Law.

I.

Plaintiff is the owner of Government lots three (3), five (5), six (6) and seven (7), in section four (4) of township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, containing the quantities of land hereinbefore referred to and indicated upon the said Government plat, and the pretended meander line of Ely or Cedar Island lake, as the same is described in said purported field-notes and as delineated upon said plat, is the boundary line of the land owned by plaintiff in said lots.

93 II.

The defendants are not, nor is either of them in possession of occupancy of any part of the land in said section four (4) belonging to the plaintiff; nor do said defendants, or either of them, withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled.

III.

The defendants in each of the above entitled actions, respectively, are entitled to judgment therein, that plaintiff take nothing in said action and for their costs and disbursements.

Dated September 4, 1901.

By the court,

WM. A. CANT, *Judge.*

Memorandum.

This is an action in ejectment. Plaintiff must therefore recover, if at all, on the strength of its own title. It is attempted to make out such title to the land here in dispute through patents to certain fractional lots, most of them fractional forties, which, according to the surveyor's plat, appeared to abut upon Cedar Island lake, as shown by the meander line delineated on such plat. In fact, there was no lake or other body of water in the vicinity of the meander line of these lots as delineated on the plat to which it would be applied, and Ceder Island lake was distant from half a mile to three-quarters of a mile therefrom. Traveling by the Government
94 lines extended, such lake was in some cases distant a mile or more, while in some cases such line, if projected, would not reach the lake at all. This intervening area, delineated as covered by the waters of the lake, is what is here in dispute. In truth, it comprises several hundred acres of "high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down

to the water's edge." The lake when reached has "high, steep and heavily timbered banks."

Plaintiff contends that the boundaries of its fractional lots, as they are pictured upon the plat, should be enlarged and extended through and across the forest so as to embrace the lands in dispute. By so doing, patents purporting on their face to convey 223.92 acres of land would operate to convey about 520 acres or upwards, all of the same general character; and patents purporting to convey thirty acres might possibly be construed as conveying as much as 160 acres. The patentees, of course, paid only for the acreage specified in the patents.

The question is, Where are the boundaries of plaintiff's fractional lots? Did the patents for such lots cover the land in dispute, or did they not? None of the subsequent conveyances have any bearing upon the question. The question is, What can fairly be said to have been the *bona fide* intention of the parties,—the Government and the patentees? This must be discovered by an inspection of the patents themselves, and by applying to them the surrounding facts and conditions which actually existed and attended this issue.

95 Plaintiff invokes the general rule that meander lines are not lines of boundary, and that in such cases the real boundary is the natural monument, the thing or body meandered wherever that may be. This is the general rule, for two reasons: First, because there is less liability of errors or mistake when natural monuments are referred to; and second, because meander lines, from their very nature, are intended to be only an approximately accurate survey of the shore line faithfully made, showing its general contour and cutting across both headlands and inlets. When the body is actually meandered, all the land to the water is considered as surveyed, and this is the usual and well known method of surveying it. If there are small areas of land without or small areas of water within the meander line, it is but incidental to the work which is approximately correct. The intention, therefore, is very general in such cases to convey to the river or lake in question, irrespective of whether the delineated meander line follows the shore with absolute precision or not. The application of the rule invoked by plaintiff almost invariably discloses the true intention of the parties; and hence it has become firmly established in the law as the general rule applicable in all ordinary cases.

This rule, however, is not universal, and there are several suggestions which may be made, and which it would seem serve to destroy its applicability in this case:—First, this is not an ordinary case. It is quite an extraordinary one. It introduces elements wholly lacking in the cases relied upon by plaintiff. In those cases the lands were all surveyed in the ordinary way. The sur-

96 veys were made in good faith and in the usual course of business, as such things are usually done. In some of the cases this is considered of sufficient importance to receive specific mention by the courts. (Mitchell *vs.* Smale, 140 U. S. 414; St. Paul *vs.* First Div. &c., 26 Minn., 34.) In most of the cases, the lands without the

meander line were not greater in area than is usual and incidental to the performance of such work. It was therefore considered fair in those cases to hold that the usual rule applied and that the land to the body of water was conveyed. In some cases, it was not clear that the land in dispute was not the result of reliction or accrition, as in Forsyth *vs.* Smale, 7 Biss. 201; and in others mention is made of the fact that the disputed tract was or may have been subject to inundation, and may have been partly covered when the survey was made. All this is to make clear that in those cases the survey was made in good faith.

The cases which on first inspection seem to go the farthest in support of plaintiff's view, and to be themselves extraordinary, are the Mitchell-Smale case in 140 U. S. and the Schlosser case in 96 Iowa. But in the first case the meander line was actually and in good faith run just where it purported to have been, and the character of the land without the line, a projecting low point subject at some stages — water to partial inundation, was such as to fairly show that at the time the plat was made there was no intention other than to consider the survey in good faith as complete and the projecting spit of land as a part of the within the meander line. It is just such projections as this that a meander line is not
97 intended to follow, and so the decision says. It may be noted that even in that case three of the present judges of the Supreme Court dissented from the decision on its merits. In the Schlosser case the land in dispute was mostly high and dry, but there was no pretense that the meander line was not actually and in good faith run just where it purported to have been; the body of water meandered had a very considerable area compared with the neck of lake here involved, and the error, therefore, was much less glaring; for aught that appears, the land may have been a projecting portion of the shore line, and therefore, clearly within the rule, and generally speaking, the circumstances were not such that the court felt justified in considering the case as without the general rule.

Second. Cedar Island lake is a practically impossible boundary. Where the strip in dispute is a comparatively narrow one, or even one of considerable width on one side only of a body of water, and where Government lines all running in the same direction may be so extended as to appropriate the land without conflict with fractional lots formed by lines running at right angles to those first mentioned; it is comparatively easy for courts to render decisions respecting the ownership of the land in dispute, which to all minds save those illumined by a considerable experience at the bar, seem extraordinary. But where, as in this case, by a fiction of the surveyor, we have the spectacle of fractional lots facing in such varying directions that their lines if extended would cross each other in the utmost confusion on the face of the land claimed,
98 the absurdity of attempting to extend the boundaries of such lots so as to include these additional hundreds of acres of upland seems quite apparent. Unless for this particular case the courts

are to give birth to some new rule of law there is no known method of apportioning to the various fractional lots the land now sought to be appropriated by plaintiff. It cannot be done. In other words, although the contention of plaintiff's counsel has been made throughout with eminent fairness and sincerity, the results to be attained in such a case as this, should plaintiff prevail, are really so gross that up to this time courts have never felt called upon to promulgate rules which would further their accomplishment.

It is urged by plaintiff that inasmuch as the title to all the lots here involved is now vested in one owner, these difficulties which diverse ownership suggests need not be met; but if meeting them would serve, even by illustration, to make clear where the right of this contention lies, they must be met and considered.

Third. It cannot be said that the boundaries of the lots here in question should extend to any particular body of water,—Cedar Island lake, for instance,—because no such body of water was ever in fact meandered. It may be apparent that the meander line could not be referred to any other body of water, but it is equally apparent that it should not be referred to that. Parties may be heard to urge that when surveyors in good faith fairly follow the sinuosities of the shore line, the patents afterwards issued shall carry to the
99 water, even though there be projecting spits or limited low areas without the meander line, and the Schlosser case would say even though there may be a considerable area of high and dry land without the same; but such contention should not be held good where the evidence shows that no such line was ever run, and no such body meandered, and when the so-called meander line is merely a fugitive or arbitrary line.

This so-called meander line, if traced on the ground as delineated on the plat, would be found to run through the woods for miles not near or approaching any body of water, distant more than half a mile, sometimes more than three-fourths of a mile in a straight line from the lake in question, and the lake at its nearest part, when reached, found to be a neck of water averaging less than 120 rods in width.

The understanding of the courts is that "a meander line by its exclusion and inclusion of irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream."

140 U. S., 413.

It is supposed to be "an accurate survey of the river" or lake.
10 Minn. 74, 75, (Gil.)

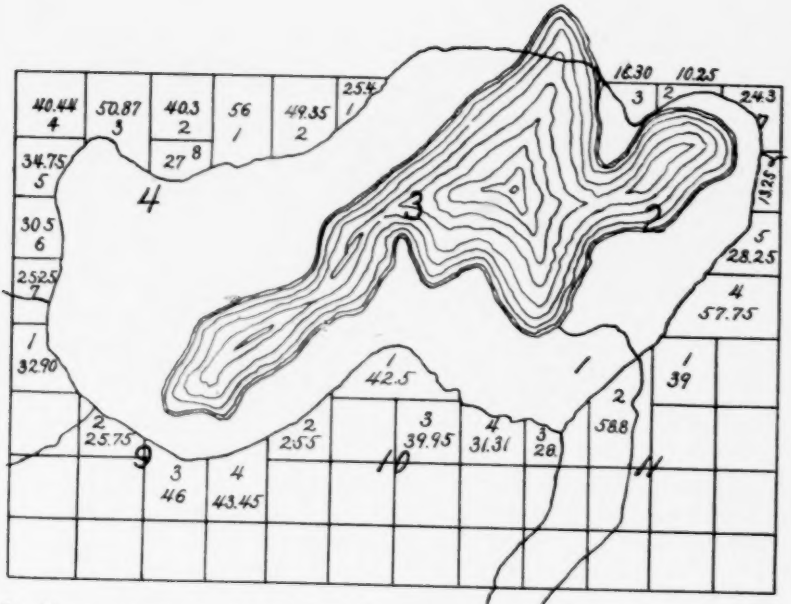
Under the definitions and the understanding thereof by the courts, the line here in question meandered nothing, and under the law everybody interested was bound to know that it did not. It will hardly be seriously contended that such line was ever run on the

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

11492

No 127
S. L. & E. Co. } p. 116b
vs.
Burns

Exhibit B



Sections 2. 3. 4. 9. 10 & 11 Town No. 57. Range 17.
St Louis County, Minnesota.

82

ground as the meander line of Cedar Island lake. Without
100 doubt, the line was an arbitrary one, made on paper only,
and for the purpose of saving labor and expense to the surveyor. Under the rules and practice alluded to, the land without the line in any event was never surveyed and could not be patented. The grossness of the work stamped the survey as indubitably fraudulent and in such conclusive manner that all might see and know.

Fourth. What are nominally meander lines do not necessarily skirt any body of water, and they may in some cases be or become boundary lines.

33 Ore., 274,
161, Ill. 462,
10 Fed. Cases, 961,
85 Fed. 45,
159 U. S. 40.
175 U. S., 308.

Fifth. There must be some limit to the length courts will go in search of the water body where none is found at or near the place wher- the same is delineated on the plat. The boundaries of fractional lots will not be extended indefinitely where they appear by the plat to abut on a body of water which does not in fact exist at or near the place designated on the plat;—

In other words, although the general rule relied upon by plaintiff is correct, there come times and there are cases where it no longer applies.

54 Minn. 299.
76 Minn. 400.
78 Wis. 240.
33 Ore. 274.
101 161 Ill. 462.
10 Fed. Cases, 961.
159 U. S. 45.
175 U. S. 300.

Plaintiff contends that in such cases some action must be brought in the courts to correct the survey, and if patent has issued to adjust the rights of the patentees and the Government; that before this is done the legal effect of the patent is always to convey to the body of water wherever it may be.

Our own court has said: "There may be cases in which the error in the Government survey is so gross that the purchase of the fractional or supposed fractional sub-division of Government land will not take to the short of the stream or lake although the plat of the sub-division calls for such shore as one of the boundaries."

76 Minn. 400–401.

This, if adhered to, is determinative against plaintiff in one of its main contentions. That is, in such cases, the error or fraud being shown, and certainly if it be such that purchasers must take notice

thereof, the courts will declare as a matter of law that the patent in question does not convey to the body of water.

Although the Supreme Court of the United States has perhaps never so expressly declared, a fair reading of its decisions will show that such is assumed to be the rule. In determining whether this statement is correct, we may in addition to 159 U. S. 40, and 175 U. S. 300, bear in mind the formal affirmance by that court of Lammers *vs.* Nissen (4 Neb.), though on another point, the approval
102 of the charge to the jury in the lower court involved in 159 U. S. 40. The instructions given to the jury by Mr. Justice Miller of that court upon the trial of Granger *vs.* Swart, 10 Fed. Cases 961, the views of the dissenting judges in Mitchell *vs.* Smale, 140 U. S., who not only recognized that such was the rule, but were in favor of applying it to the facts before them, and the grounds upon which all the decisions are based which have to do only with the application of the rule in ordinary cases.

Aside from this, the State courts of Illinois, Oregon, Nebraska and Nevada agree with our own upon this point, and are unequivocally opposed to plaintiff's views. The supreme court of Wisconsin is equally opposed to plaintiff, but has a theory of its own, as will be indicated.

In addition, the cases at
98 Fed. 924,
93 Va. 258,
83 Tex. 169, and
108 Cal. 44
are engaged with the consideration of questions closely allied to those here involved, and so far as they may aid by analogy of reasoning they are not in support of plaintiff's views. Upon some grounds, however, they are capable of being distinguished.

The general rule then, applicable to all ordinary cases, is that meander lines are not lines of boundary, but that the body of water whose margin is meandered is the true boundary; but further and just as firmly established is the rule that there are extraordinary
cases where the courts will not go to the body of water nor
103 extend the boundaries of fractional lots to that distance but will reject that element of the description entirely.

The question then resolves itself into an inquiry as to what the rules of limitation are which shall guide the courts in the consideration of each particular case as it may arise, to what cases may the rule relied upon by plaintiff be applied, and to what may it not?

1st. It would seem that in a case like this, where the fraud is found to be so gross that all must take notice of it, the courts would certainly not attempt a search for the body so fraudulently delineated. In such cases it should follow directly as a matter of law that the boundaries of fractional lots will not be extended to any body of water which, by the fraud or mistake of the surveyor perfectly apparent to anyone who care- to see, has been given a wholly erroneous location on the plat.

2nd. Plaintiff suggests that when the natural body is not found

where delineated on the plat, if there be any limitation at all, the search therefor would be extended at least to the external boundaries of the section in which the fractional lots are delineated, and that if the body of water were found within the section lines that the fractional lots would extend thereto as their boundary. This rule would be an arbitrary one, its application would at times be attended with great confusion, as in this case, and it is unsupported by authority. It may be fancied that it would not prove satisfactory if the so-called meander line were just within the section, and the real shore of the lake were half a mile without and beyond the
104 same, instead of conditions being reversed in so fortunate a manner for plaintiff's argument, as is the case here.

3rd. The rule established by carefully considered cases in Wisconsin is that where the body of water is not found at the location designated on the plat, the courts will go in search thereof to the next quarter-quarter section line, and if the natural monument is not there found, will enlarge the boundaries of the fractional lot to that line, but no further.

78 Wis., 240.

This rule and case have been referred to with seeming approval, certainly not with disapproval, by our own court at

54 Minn., 299, and
76 Minn., 400–401;

and also by the United States Supreme Court at
159 U. S., 45.

Whether or not those courts approve the specific rule adopted in Wisconsin, they certainly agree that cases of gross mistake or fraud may arise where the patent would not convey to the body of water which nominally had been meandered.

The deduction of plaintiff that the rule in 78 Wis. has been discredited by the U. S. Supreme Court, in Hardin *vs.* Jordan, 140 U. S., would seem on investigation to be incorrect. The case of Hardin *vs.* Jordan had to do solely with the question of riparian rights, the ownership of submerged lands beyond the shore line. The opinion so specifically states at two separate places therein, on pages 380 and 388 thereof. The case there criticised was a self-con-
105 demned Michigan case, which attempted to lay down a rule for apportioning submerged lands. But the rules for determining what portion of submerged land shall be allotted to a particular section of the shore line to which it is appurtenant has little analogy with the rule which should determine to what length the court will go in search of a natural monument which is not found at the place designated on the plat, before it will be conclusively presumed that there has been fraud or gross error in the survey, and that the call for the natural monument must be rejected.

Much may be said in favor of the Wisconsin rule. It is, however, subject to the same objections which may be urged against the rule

suggested by plaintiff. It is certain, but not uniform in its application. The so-called meander line may very nearly approach the quarter-quarter line in one case and be nearly eighty rods from it in another, so that the search for the body claimed to have been meandered might in some cases extend nearly eighty rods, while in others it *might* be limited to one, just as under the rule suggested by plaintiff such search might in some cases extend nearly a mile, and in others be limited to a yard. The rule should be both certain and uniform.

Again, if the Wisconsin rule, limiting the search to the quarter-quarter line, is to be adopted at all, it would seem that the rule should be not that the court will search for the body of water as far as the quarter-quarter line, and if such monument is not there found will extend the boundaries of the lot to such line, but that if such natural monument shall not be found within such line, the
106 court will conclusively presume against the right of extension thereto and will resort to other means to define and locate the grant. Such seems to have been the understanding of our court as to what the Wisconsin rule, if adopted at all, should be.
54 Minn. 299.

The question is not whether plaintiff's contention is correct, that we must in all cases extend the boundaries of the fractional lots to the body of water which nominally has been meandered. It may fairly be said that under practically all the authorities that is not the rule. Where the contrary is not declared, it is at least assumed. In substance, all admit that cases may arise where such general rule is wholly inapplicable. The question is, what is the true rule which shall be certain and uniform in its operation, and which may be applied to the various cases as they arise, with the result that justice shall be done.

From an examination of all the authorities, it may be said :—

5th. That the true rule is and should be that if under the definitions and the expressed understanding of the courts the line in question may fairly be considered a line which meanders some body of water, then the land to such body will be considered as surveyed and a conveyance by reference to the plat, on which such meander line appears, will include the land to the body of water actually meandered ; but if under such definitions and expressed understanding the line cannot be fairly considered as the meander line of any existing body of water, then no particular body of water can
107 be referred to as a boundary of the tract sought to be conveyed, and other means must be made use of to determine its extent.

Plaintiff argues that such a rule would render the patents in all such cases void for the reason that it would be uncertain what area would be covered thereby. Patents are simply forms of conveyance, and in such cases as those referred to they have no greater infirmity than the multitude of deeds constantly coming before the courts for construction by reason of ther conflicting calls. These deeds are not

void for uncertainty. They are open to question and call for construction by the courts, when applied to the ground in dispute. Deeds and patents to be valid are not required to be couched in language beyond all possible question. Almost any such instrument may be made the subject of litigation, and of judicial construction, but if the alleged uncertainty does not transcend the power of the courts to determine its true meaning, the conveyance will stand. The uncertainty which renders an instrument void is not the uncertainty which will admit of question, but the uncertainty which will not admit of judicial construction.

A patent ambiguity will render an instrument void for uncertainty. This is not such a case. In case of a patent ambiguity "it is competent to resort to parol proof showing all the circumstances from which a legal inference can be drawn, that one or another line was intended by the ambiguous description used in the deed." The patents here involved are not void. Whether the lands within the meander line were actually surveyed or not, the Government
108 having conveyed by patent and received pay for the area designated on the plat as within such line, it cannot now assert that the patents did not convey the minimum area to which they could be applied.

In regular order, the next question would be whether, in this case, under the rule given, the line nominally delineated on the plat as the meander line of Cedar Island lake may fairly be considered as in fact a meander line of that body of water. It has already been answered. In my opinion, it cannot. If the lake were ten miles distant no one would claim that the line could be considered a meander line of that body of water. Its meaning would not admit of such an application of the term; neither will it here.

If, then, the lots do not extend to Cedar Island lake as this boundary, what are the other means at hand, which, under the rule, must be resorted to for the purpose of defining and locating the grant,—referred to at 54 Minn. 299? It is an instance where the call for the natural monument must be disregarded, and as in many other cases, by force of circumstances the so-called meander line, which is accurately described in the field-notes, becomes a line of boundary.

33 Ore. 274,
161 Ill. 462,
10 Fed. Cases, 961,
85 Fed. Rep. 45,
159 U. S. 40,
175 U. S. 308.

109 The lands without the meander line were never in fact surveyed, and as to them at least no one is estopped from asserting the truth. The character and quantity of this unsurveyed tract was such that all persons were bound to take notice that it was in fact unsurveyed. It was not a headland; it was not a partially formed accretion, subject to be washed away; it was not lowland, subject to inundation; it had no peculiarity of feature whatever,

which to any sane mind would serve to justify or excuse its being left without the meander line as the result of any survey made in good faith. If unsurveyed, and if no one is estopped from asserting that fact, then it was not subject to patent, and no one is estopped from asserting that.

The inquiry throughout is to ascertain what may fairly be said to have been *bona fide* the intention of the parties to the patents at the time they were issued. It may be borne in mind on entering this field that it is a very arbitrary rule by virtue of which we presume as to the intention of the Government officials having in charge the disposition of the public lands. Whatever may be the rule and the reason thereof as to a private individual interested in a conveyance of lands, we all understand well enough that it is a practical impossibility that Government officials should know anything of the condition, character or quantity of public lands other than what is disclosed by an inspection of the plats and field-notes returned by the surveyor generals. Having in mind the respective positions of the two parties to each of these patents, and the knowledge which they actually had, it could not reasonably be said that it was
110 the intention of the Government to accomplish what is now urged by the plaintiff. All the circumstances are inconsistent with any theory other than that the Government officers knew nothing whatever about this large intervening tract, and could therefore have had no intention of conveying it.

But leaving out of view this real position, and assuming that both had equal knowledge, what can it fairly be said was the understanding and intention of the patentees, and what did they respectively in good faith understand was the intention of the Government with respect to the land conveyed?

To warrant a determination in plaintiff's favor, we must, from a consideration of all the circumstances, be able fairly to deduce therefrom the inference that in good faith it was the understanding and intention of both parties:

(1.) That having in mind what a meander line is, viz: "an accurate survey" of the shore line, at least an approximately accurate one, and having in mind its purpose in Government surveys, which is to determine the amount of land for which, in case of sale, the purchaser shall pay, and bearing in mind the duties of the land officers to the public generally, nevertheless the line in question should be considered the meander line of the distant Cedar Island lake.

(2.) That the land in dispute, though of so great an area, and though without any peculiarity of feature which would excuse, or justify or explain the leaving it without the m-ander line, should nevertheless be considered as surveyed land within the rule
111 that when a survey is made in good faith in the usual course of business, a meander line does not and cannot follow every winding turn of the shore line, but is a series of tangents, and that limited areas of headlands which in the usual course of business as such surveys are ordinarily made would fall without the line are to

be considered a part of that within the line, and as surveyed land equally with that.

(3.) That the patentees should be entitled to claim the land lying between the meander line as delineated on the plat, and the actual waters of the lake, although under the peculiar conditions surrounding this case there was no known rule by which such land could be apportioned to the various fractional lots, and a conflict of interests would certainly result. In other words, although both parties at the time understood that it was practically impossible to even conjecture what was being conveyed by any particular patent.

(4.) That parties paying for twenty-seven acres or thirty acres and receiving patents calling for those acres, should be entitled to claim possibly 160 acres, and that side lines delineated as forty or fifty rods in length should be considered as extending possibly 300 rods or more.

(5.) In addition to all this, there must have been in my opinion some element of estoppel which would now prevent the Government from insisting that the patent should be given its limited and strict legal effect, for the legal effect of the patent could not be enlarged by the understanding of the parties, except upon the ground of estoppel.

All this cannot be done or found. Even if it be assumed
112 that both parties were equally informed, which is a violent assumption when the Government is a party, it must be held that both knew and recognized the fraud or gross error in the survey, and the legal consequences which must follow as a result; that both knew, in any event, the land without the meander line was unsurveyed and not subject to patent; that both knew and recognized the consequences which attached as a matter of law where a line delineated on a plat and denominated a meander line was not in fact such within the meaning of that term.

There is no issue upon the question of plaintiff's being a purchaser in good faith, but as bearing upon the question of estoppel it may be said that it could not in any event be heard to so claim. It had no right to indulge in the convenient theory that its lands extended to the lake. "One receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of the surveyor more land was bought than was paid for, or than the Government was offering for sale."

175 U. S. 300.

The patents, when issued, conveyed a definite quantity of land. Their true meaning and effect, when applied to the land, was capable of ascertainment—and subsequent conveyances have not operated to enlarge the grant. The same notorious conditions which marked this survey at the first and served to warn the original patentees of the true limits of their grant have been continuing proclamations which bound each of their successors.

That there are cases where as a matter of law patents do
113 not operate to convey lands to the body of water which nominally has been meandered is thoroughly established, and if there are such cases, this in my opinion should be one.

I am not unmindful of the fact that upon questions closely allied with those here involved, and on a consideration of evidence some of which must have been identical with that introduced in this case, distinguished judges appear to have reached conclusions at variance with these. This calls for no comment here further than to say that I have given their opinions the careful consideration to which such eminent authority is entitled without being able to agree with their views therein expressed.

WM. A. CANT, *Judge.*

114 *Notice of Motion to Amend Findings.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
G. A. BURNS and MARY A. BURNS, Defendants. }

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

To Messrs. Wilson & Vanderlip and R. R. Briggs, attorneys for defendants in the above entitled cases, respectively.

GENTLEMEN: Notice is hereby given that on the 14th day of September, 1901, at 9:00 o'clock in the forenoon, the plaintiff in said causes will, at the court house in the city of Duluth, move the court that it modify the findings of fact heretofore filed in said causes and make additional findings as set forth in the form of motion hereto attached; that said motion will be based on the pleadings, stipulations
115 of parties in said actions, and the evidence presented on the trial of the same.

Dated Sept. 13th, 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS,
Attorneys for Plaintiffs.

It is hereby stipulated that the motion to be made as indicated in the above notice may be made at the time and place therein stated, due notice of the same being hereby admitted.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Motion to Amend Findings.

STATE OF MINNESOTA,
County of St. Louis.

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY A. BURNS, Defendants.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants.

Now comes the plaintiff in the two above entitled actions and
116 respectively moves the court that the findings of fact by the court as heretofore made under date of September 4th, 1901, and then or subsequently filed in the office of the clerk of said court, be amended as follows:

1st. At the end of paragraph 8 in such findings add the following statement, viz: "A true copy of said township plat is hereto annexed and marked 'Exhibit A.'"

2nd. Annex also to the findings of fact a copy of the township plat referred to in such finding.

3rd. Attach also to the findings of fact a copy of the plat Exhibit "B," which was introduced in evidence at the trial; and following the amendment hereinbefore proposed and preceding the ninth paragraph of the findings as made, add the following: "Exhibit B. hereto attached correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876 when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions."

(Here follow diagrams marked pp. 116*a* & 116*b*.)

4th. In paragraph 9 of the findings of fact, strike out the words "subject to homestead entry and," also the word "they," such language not being embraced in the stipulations of facts in the case.

5th. In the first line of paragraph 10 of the findings of fact, after the word "township," insert the words "as appears from the plat hereto attached marked 'Exhibit A.'"

117 6th. After paragraph 10 in the findings of fact, insert the stipulations Nos. 8, 9 and 10, in place of paragraph 11 of the said findings.

7th. Strike out the findings embraced in the twelfth numbered paragraph, extending to the bottom of page 7, in view of the fact that by introducing the plat of the township in the findings of fact, the statements embraced in said paragraph 12 became unnecessary as findings of fact.

In case this motion is denied, then plaintiff moves that the language "a few feet of lake frontage," in the eighth line from the bottom of page 7 be changed so as to read "about one-third of a mile of lake frontage."

8th. That the court find specifically that prior to the patenting of any of the lands in this township an affidavit executed by a person who alleged therein that he had explored the western and northern parts of said township, and that he was qualified to state the facts therein set forth had been presented to the Commissioner of the General Land Office through the action of the register of the local land office at Duluth, and of the United States surveyor general for the State of Minnesota, tending to show that what purported to have been a survey of this township by said Howe was, so far as the western and northern portions of the same are concerned, and embracing the lands in the vicinity of Cedar Island lake, false and fictitious, and that no marks of said Government survey could be found on the ground, excepting, however, the survey of the exterior lines of said township. And thereupon, a request was preferred by the said surveyor general to the Commissioner of the General

118 Land Office, that a re-survey of said lands in this township be made. That subsequently, upon further representation to the Commissioner of the General Land Office, by letter, of a fact tending to discredit such affidavit, the Commissioner of the General Land Office declined to order a re-survey of said lands, and subsequently patents were issued of the lands in this township, as herein elsewhere more specifically set forth.

If the court shall decline to find, as above requested, then the plaintiff moves that the court find the facts in regard to the subject therein referred to as disclosed by the evidence in the case.

9th. That the court find whether or not there existed at the time of the survey by said Howe, made or purported to have been made, any object other than Cedar Island lake with reference to which the meander line shown in said field notes and delineated on said Exhibit A. could have been made or to which it could be referred.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS,
Attorneys for Plaintiff.

119 *Order Amending Findings.*

STATE OF MINNESOTA,
County of St. Louis.

District Court, Eleventh Judicial District.

SECURITY LAND AND EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY A. BURNS, Defendants.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants.

The plaintiff in the two above entitled actions having moved the court to amend the findings heretofore made and filed herein, and the matter having been argued by counsel for the respective parties, and the court having duly considered the same,

It is hereby ordered that the said motion be and the same is hereby granted to the extent following, to-wit:

1. That paragraph 8 of said findings of fact be and the same is hereby amended by adding at the end thereof the following words: "A true copy of said township plat is hereto annexed and marked Exhibit A;" and by also annexing to the said findings a copy of said township plat above referred to and designated as said Exhibit A.

120 Also, that said paragraph 8 be further amended by adding to the findings a copy of the plat Exhibit B., which was introduced in evidence at the trial, and also adding the following words: "Exhibit B., hereto attached, correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876 when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions."

2. That paragraph 11 of said findings of fact be amended by inserting in the second line thereof, after the word "lots," the following words, to-wit: "and all the surveyed lands within said township."

3. That paragraph 12 of said findings of fact be amended by striking out the words "and a few feet of lake frontage," found in lines 14 and 15 of said paragraph, and by inserting in lieu thereof the words "about one-third of a mile of lake frontage."

4. That said findings be further amended by adding thereto paragraph 13, as follows:

"13. That prior to the patenting of any of the lands in this

township, an affidavit made by one claiming to know the facts was forwarded through the receiver of the local land office and the surveyor general of Minnesota to the Commissioner of the General Land Office at Washington, wherein were various statements
121 tending to show that what purported to have been a survey of said township made by said Howe was, as to the northerly and westerly portions thereof and including the lands in question, false and fictitious; that transmitted therewith were two letters from said receiver of the local land office and one from the surveyor general of Minnesota, tending to discredit the affidavit in question, and to indicate that the statements therein made were based upon mistake; that at the time said affidavit and communications were transmitted, as aforesaid, the surveyor general of Minnesota proffered a request that a competent surveyor be employed to examine the surveys made by said Howe, including the lands in question; that upon consideration thereof, the Commissioner of the General Land Office declined to grant such request."

It is further ordered that, except as above granted, the said motion to amend the findings be and the same is hereby denied.

WM. A. CANT, *Judge.*

122 *Judgment.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
G. A. BURNS and MARY L. BURNS, Defendants. }

The above entitled action having been duly brought on for trial in its regular order upon the calendar of the March, 1901, general term of the district court above named, on the second day of April, 1901, before the Honorable W. A. Cant, one of the judges of said court; without a jury; and said action having been tried together with another action entitled Security Land & Exploration Company, plaintiff, *vs.* Henry Weckey and Rosaline S. Weckey, and upon the same record, by stipulation of the parties thereto and by order of said court; and said judge having on the 4th day of September, 1901, duly made and filed his findings of fact and conclusions of law in said actions, and amendments thereto on December 3rd, 1901, wherein and whereby he ordered judgment in favor of the defendants in this action, and against the plaintiff, that the plaintiff take nothing in this action, and for their (said defendants') costs and disbursements herein;

Now, pursuant to said decision and order, upon motion of
123 R. R. Briggs, of counsel for said defendants, it is hereby adjudged and decreed that plaintiff take nothing in the above

entitled action, and that the defendants above named have and recover of and from said plaintiff the sum of $11.00, their costs and disbursements duly taxed and allowed in this action.

Witness the Honorable Wm. A. Cant, judge of the district court aforesaid, at Duluth, this 23 day of Dec. in the year of our Lord, 1901.

J. P. JOHNSON, *Clerk*,
By H. A. LIEDEL,
Deputy Clerk.

[SEAL.]

Judgment.

STATE OF MINNESOTA, }
County of St. Louis, }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

The above entitled action, having been duly brought on for trial in its regular order upon the calendar of the March, 1901, general term of the district court above named, on the 2nd day of April, 1901, before the Honorable W. A. Cant, one of the judges of said court; without a jury; and said action having been tried together with another action entitled Security Land & Exploration
124 Company, plaintiff, *vs.* G. A. Burns and Mary L. Burns, and upon the same record, by stipulation of the parties thereto and by order of said court; and said judge having on the 4th day of September, 1901, duly made and filed his findings of fact and conclusions of law in said actions and amendments thereto on December 3rd, 1901, wherein and whereby he ordered judgment in favor of the defendants in this action, and against the plaintiff, that the plaintiff take nothing in this action, and *and* for their (said defendants') costs and disbursements herein;

Now, pursuant to said decision and order, upon motion of R. R. Briggs, of counsel for said defendants, it is hereby adjudged and decreed that plaintiff take nothing in the above entitled action, and that the defendants above named have and recover of and from said plaintiff the sum of $11.00, their costs and disbursements duly taxed and allowed in this action.

Witness the Honorable Wm. A. Cant, judge of the district court aforesaid, at Duluth, this 23 day of Dec. in the year of our Lord 1901.

J. P. JOHNSON, *Clerk*,
By H. A. LIEDEL,
Deputy Clerk.

[SEAL.]

125 *Notice of Appeal.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
G. A. BURNS and MARY L. BURNS, Defendants. }

To Wilson & Van Derlip and R. R. Briggs, attorneys for the above named defendants, and to J. P. Johnson, clerk of said district court:

Please take notice, that the above named plaintiff, Security Land and Exploration Company, appeals to the supreme court of the State of Minnesota, from the judgment of the said district court entered herein, on the 23rd day of December, A. D. 1901, and from the whole thereof.

Dated this 27th day of December, A. D. 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

(Endorsed on back:) Due service of the within notice of appeal is hereby admitted at Duluth this 28th day of December, 1901. J. P. Johnson, clerk of district court, St. Louis county.

126 Due service of the within notice of appeal by copy is hereby admitted at Duluth, Minn., this 27th day of December, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Bond on appeal is hereby waived, December 27th, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Notice of Appeal.

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

To Wilson & Van Derlip and R. R. Briggs, attorneys for the above-named defendants, and to J. P. Johnson, clerk of said district court:

Please take notice, that the above named plaintiff, Security Land and Exploration Company, appeals to the supreme court of
127 the State of Minnesota, from the judgment of the said district court entered herein, on the 23rd day of December, A. D. 1901, and from the whole thereof.

Dated this 27th day of December, A. D. 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

(Endorsed on back.)

Due service of the within notice of appeal is hereby admitted at Duluth this 28th day of December, 1901.

J. P. JOHNSON,
Clerk of District Court, St. Louis County.

Due service of the within notice of appeal by copy is hereby admitted at Duluth, Minn., this 27th day of December, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Bond on appeal is hereby waived, December 27th, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

128 (Endorsed:) 12912–12913. State of Minnesota supreme court. April term, A. D. 1902. Security Land and Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Security Land and Exploration Company, appellant, *vs.* Henry Weckey and Rosaline S. Weckey, respondents. Paper book. Billson, Congdon & Dickinson and John G. Williams attorneys for appellant. Wilson & Van Derlip and R. R. Briggs, attorneys for respondents. Duluth. J. J. Le Tourneau & Co. 1902. Filed Mar. 5, 1902. Darius F. Reese, clerk.

129 12912–12913.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND & EXPLORATION CO., Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.
No. 94–95.
SECURITY LAND & EXPLORATION CO., Appellant,
vs.
HENRY WECKEY and ROSALINE WECKEY, Respondents.
Syllabus.

1. A meander line is not, as a general rule, a boundary line, yet the boundaries of fractional lots cannot be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact never existed at substantially the place indicated on the plat. In such exceptional cases the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey and be held to be the boundary line of the land it delimits.
2. Rule applied and held upon the special facts of this case that the trial court correctly held that a line on a Government plat purporting to be a meander line was intended to be the boundary line of the fractional lots here in question.

Judgments affirmed.

130 12912–12913.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND & EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.
No. 94–95.
SECURITY LAND & EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE WECKEY, Respondents.
Opinion.

These are ejectment actions to recover possession of certain land in section four of township one hundred and fifty-seven, range seventeen, in the county of St. Louis, this State. The controverted ques-

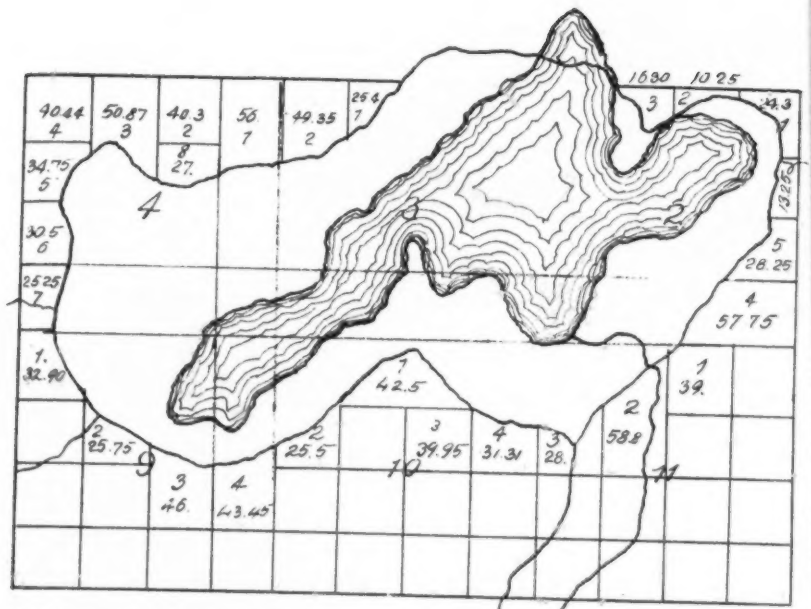
tions of law and fact are the same in each case and for this reason they were by stipulation heard together in the district court and in this court. The defendants in each case recovered a judgment in their favor in the district court, from which the plaintiff appealed. The here material facts as found by the trial court are substantially these: The township named was ordered surveyed by the General Land Office and the contract for the survey thereof awarded to H. S. Howe. He ran and marked the exterior lines of the
131 township except the south line thereof, which had been previously surveyed and set posts at all section and quarter section corners on the three exterior lines, and a meander post upon the north line of the township where the line running west from the northeast corner of the township first strikes the shore of a lake known as Ely or Cedar Island lake. He made no survey of the interior of the township and no section lines therein were ever run by him, and no section or quarter section corners were ever located or marked by him, with the possible exception of those in section thirty-six, and none of the streams or permanent lakes, of which there were several in the township, were meandered by him. He, however, made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey of the township, purporting to give the length and directions of all interior section lines therein, the location of all section and quarter section posts, and the bearing trees thereof, the character of the soil and timber, and all other data and information required by the statutes of the United States and the rules of the General Land Office to be ascertained and reported by deputy surveyors in due course of making surveys of public lands. With the exception of the description of the survey of the three exterior boundary lines of the township actually run by him, the field notes returned by him were imaginary and fictitious, and were, in fact, false and erroneous.
132 From the purported field notes, it appeared that there existed in the northerly part of the township, lying in sections 2, 3, 4, 9, 10 and 11 thereof a lake known as Ely lake, or Cedar Island lake, with a surface area, as indicated by the field notes, of about eighteen hundred acres; in fact the lake then was and still is a body of water not exceeding eight hundred acres in area. It is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof. It does not, in fact, touch section 11 at all, and covers only an area of very small extent, (less than one half of a forty acre tract), in the southeast corner of section 4. Between the actual water line of the lake and the meander line thereof, as returned by the purported field notes, there were at the time of the survey, and still are, at least one thousand acres of high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down to the water's edge. The field notes and report of survey so made was duly approved and a plat of the town-

ship made in accordance therewith which was accepted and approved by the General Land Office as the official plat of the township. No other survey and plat of the township were ever made. The actual shore line of the lake as it was at the time the supposed survey was made, and now is, and the meander line as marked on the official plat, and the location of
133 the fractional lots, with reference to such lines, their area and side lines are correctly delineated on the following map:

(Here follows diagram marked p. 133.)

No 127
D. L. & B. Co. } p. 133
Taurus

Exhibit B



Sections 2 3 4 9 10 & 11 Town No 57. Range 17.
St Louis County, Minnesota.

82

134 The outer meander line on this map represents the one marked on the official plat as shown by the field notes of the surveyor and the inner meander line represents the lake as it actually exists and did exist when the field notes were made and filed. The land involved in these actions lies between those lines and is and has been since 1892 in the possession and actual occupancy of the defendants, who have made permanent and valuable improvements thereon and claim that it is subject to homestead entry. Between December 1879 and March 1887, all of the lots here in question were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands and by patents containing the usual clause, "according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general." By divers mesne conveyances from the patentees, the title to lots 3, 5, 6, and 7, containing according to the plat and to the patents therefor the following quantities of land, respectively: Lot 3, 50.37 acres; lot 5, 64.75 acres; lot 6, 30.5 acres; and lot 7, 25.25 acres; became vested in the plaintiff in the year 1891 and prior to the commencement of these actions; and the plaintiff is still the owner thereof, and as such owner, has within the boundaries of the lots, as shown upon the plat, and within the meander line of the lake described in the field-notes, the full quantity of land
135 above described as contained therein. The title to the Government lots one and eight (which are the only lots in the east half of section 4 apparently bounded by the lakes) was conveyed by Government to certain patentees, and the patent title thereafter became vested in Simon J. Murphy and others, by whom a quit-claim deed was executed and delivered to the plaintiff prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff that part of the southeast quarter of section four lying southerly and westerly of a line drawn from the center of the section to the southeast corner thereof, and also all the interest of the grantors, in the west half of the section. At the same time, the plaintiff executed and delivered to Mr. Murphy and others a quit-claim deed purporting to convey to them that part of the east half of section 4 lying northerly and easterly of a line drawn from the center of the section to the southeast corner thereof.

The trial court found as a conclusion of law that, the plaintiff is the owner of Government lots three, five six and seven in section four of township fifty-seven north of range seventeen west, in St. Louis county, Minnesota, and that the pretended meander line of the lake, as the same is described in the purported field-notes of the surveyor and as delineated upon the plat, is the boundary line of the land owned by plaintiff in such lots. And further, the defendants are not, nor is either of them in possession of any part
136 of the land in section four belonging to the plaintiff; nor do the defendants, or either of them, withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled.

Do the facts found by the court sustain this conclusion? The

claim of the plaintiff is, that all patentees of lots which by the Government plat were shown to abut upon the lake took their respective titles by reference to the plat and thereby acquired not only each as against the Government, but each as against the other, the right to a frontage upon the lake. That in the direction of the lake each of these lots has only one boundary, the lake itself, and that the meander line is not a boundary line for any purpose. In support of this claim counsel invokes the well settled general rule that a meander line is not a boundary line but that the water whose body is meandered is the true boundary, whether or not the meander line in fact coincides with the shore line for the latter being a natural monument must control courses and distances. The first and leading case in this court upon this question is that of Schurmeier *v.* Railway Co., 10 Minn. 82, which involved simply a question of riparian rights. In that case the meander line was actually run along the Mississippi river, and was substantially the same as the shore line thereof. The land in dispute was a sand-bar island lying in the river and the controversy, was, whether a fractional Government lot confessedly bounded by the river stopped at the
137 water's edge or extended to the navigable waters of the stream so as to include the island. The fact that plaintiff was a riparian owner was conceded, and only the extent of his riparian privileges and estate was in controversy. The contention was made that the meander posts on the bank marked the boundary of the land owner, but the court held that the river and not the meander line was the boundary line of the lot, and that the patentee thereof took title to the land between the meander line and low water mark in the river, which included the island in question. The case was affirmed by the Supreme Court of the United States, 7 Wall. 272.

In Everson *v.* City of Waseca, 44 Minn. 247, the meander line and the actual shore line of Loon lake in Waseca were not at all points coincident. Fractional Government lot two was delineated as lying on the south side of and as bounded by the lake, but the meander line at this point was, in fact, run some distance from the shore of the lake leaving a tract or point of several acres of dry land between it and the shore. It was held following the Schurmeier case, that the patentee of lot two took title to such point.

The case of Lamprey *et al. v.* State *et al.*, 52 Minn. 181, was one involving a question of riparian rights only for the meander line, and the actual shore line of the lake meandered were substan-
138 tially the same at the time the survey was made. The lake in question was a shallow and non-navigable one comprising about three hundred acres and after the survey and before the litigation arose the waters of the lake gradually receded and the lake had practically ceased to exist. Thereupon the Land Department of the United States caused a survey to be made of the former bed of the lake and issued patents therefor. The plaintiffs claimed title thereto by virtue of their ownership of the land abutting on the lake when the original survey was made. The defendants claimed that the patent according to the original survey through which

plaintiffs claimed title to the former bed of the lake only conveyed the land to the margin of the lake as it existed when the survey was made. Hence there was no question in that case as to any discrepancy between the meander line and the actual shore line of the lake, but as said by the court, the question was: What rights in or to the soil under water does the patentee of land bounded by a meandered inland lake acquire by his patent? The court held that such patentee took title to the center of the lake and therefore the subsequent patent was void.

In Olson *v.* Thorndike, 76 Minn. 399, the meander line purported to coincide with the bank of the Minnesota river, but in fact it did not do so and a point of land 51 rods long by 26 rods wide at one end running to a point at the other end lay between the meander line and the river. This court held, following the Schurmeier
139 case, that the point of land lying outside of the meander line was a part of the fractional lot which abutted on the river according to the official plat. The court, however, in its opinion said: "There may be cases in which the error in the Government survey is so gross that the purchaser of the fractional, or supposed fractional, subdivision of Government land will not take to the shore of the stream or lake, although the plat of the subdivision calls for such shore as one of the boundaries. It was held that Whitney *v.* Detroit Lumber Co., 78 Wis. 240, presented such a case. That case is cited in Lamprey *v.* Mead, 54 Minn. 290. But there is nothing in the record from which it can be held that this is such a case."

In the cases of Hardin *v.* Jordan, 140 U. S. 371, and Mitchell *v.* Small, 140 U. S. 406, the general rule announced in the Schurmeier case was followed. But in those cases as well as in the cases in this court to which we have referred there was in fact a stream or lake to be meandered and the shore line of the body of water and the meander line substantially coincided except where tongues or points of land extended out into the body of water beyond the meander line, or the waters had receded and the question was one of riparian rights strictly. No such questions are involved in this case for the question here is as to the boundaries of the fractional lots owned by the plaintiffs. If in this case there was in fact or ever had been a lake
140 upon which any part of the several fractional lots abutted the general rule would apply and their boundary would be the lake. But such is not this case for there was in fact *no lake at or within any reasonable distance of the meandered line or any part thereof and never had been*, to which the meander line might be found referable. It also appears from the court's findings of fact and Exhibit "B" that the side lines of some of the lots would have to be extended from one-half to one mile to reach the lake, that as to others, if their side lines were extended at right angles they would miss the lake entirely, and that if the side lines of all of the fractional lots were so extended they would overlap each other in inextricable confusion. And further, that if the

so-called meander line be accepted as a boundary line it will give to the patentees or their grantees the full quantity of land bought and paid for by them, but if they are permitted to extend their lot lines through the adjacent forest to the lake they will obtain more than three times as much land as they purchased and paid for. In short, this is not a case where the surveyor in running a meander line has made a fair and honest attempt to follow the sinuosities of the shore line of an actual body of water and by exclusion or inclusions of irregularities of contour has produced an average and approximately correct result, but one where the existence at any time of a lake upon which any part of the fractional lots in question could
141 abut is a pure fiction. Such being the case it is not within the general rule as to meander lines for the far away lake is an impossible boundary for all of the lots in question and could never have been intended by the Government and the patentees as the boundary of the lots. The official plat was only intended to be a picture of the actual conditions on the ground, but the fraudulent mistake in the plat in this case was so gross that no man actually viewing the premises could possibly be misled or believe that the shore line of the lake was intended as the boundary line of the lots. He would understand at once that the meander line as traced on the plat was the actual boundary line of the lots. This case then is one where the call for the natural monument, the lake, must be disregarded for the admitted facts show that it is an impossible call, and that if it is rejected the courses and distances and the meander line will exactly close and give to the plaintiff the precise quantity of land bought from the Government and paid for. It falls within the rule, that, a meander line is not, as a general proposition, a boundary line, yet the boundaries of fractional lots will not be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases, the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the
142 survey and be held to be the boundary line of the land it delimits.

Horne *v.* Smith, 159 U. S. 40;
Niles *v.* Cedar Point Club, 175 U. S. 300;
Fuller *v.* Shedd, 161 Ill. 462;
Whitney *v.* Detroit Lumber Co., 78 Wis. 240;
Grant *v.* Hemphill, 29 Iowa 218;
French Live Stock Co. *v.* Springer, 35 Or. 312.

The last case cited was affirmed in the Supreme Court of the United States and its decision in that case seems to conclusively establish the rule we have stated. In that case the Government plat showed that the fractional lots in question were bounded on the north by the meander line of Malheur lake. The land in controversy lay outside the meander line but adjoined the lots. The plaintiff claimed that the lake, at the time of the survey and for

some years thereafter, was a continuous body of water up to the meander line, but that from year to year for some time its waters receded leaving the disputed land bare. The defendant introduced evidence tending to show that there never was a lake in front of the lots; that Malheur lake was a well defined body of water lying northeasterly from the lots; that, if the lines of the lots were extended north indefinitely, they would never intersect the lake; that the lake never extended to the supposed meander line, and that there had never been any recession of the waters, so as to constitute the land in controversy reliction in front of the lots. The
143 questions of fact so presented were tried and found in favor of the defendant and, upon plaintiff's appeal, the supreme court of Oregon in affirming the decision of the trial court said: "The real question of cardinal and pivotal concern arises upon the urgent and strong contention and argument of counsel for plaintiff that the official survey of the lake, the approval thereof, and the official plats and maps made thereunder, showing the lake and the meander line thereof, conclusively establish the fact and location of the lake, so far as the rights of riparian grantees are concerned; and the Government and its grantees are estopped to deny the supposed fact as represented to the purchasers of abutting land. * * * If there never was a lake in front of plaintiff's lots, or if one did not exist there at the time of the survey, then there was no natural object or monument marking the north boundary of said lots; hence resort must be had to the secondary evidence, viz., the courses and distances which are ascertainable from the plats and surveys, and they must prevail. The result is natural, and the land conveyed would be just what a mathematical calculation would produce from the field notes of the survey of the fractional sections and the supposed meander line * * *." The cause was brought into the Supreme Court of the United States by writ of error sued out by the plaintiff and he there cited in his brief
144 Murphy *v.* Kirnan, 103 Fed. 104 and urged, among others, this point: "The patents in this instance, on their face and when read in connection with the plats, conveyed all the public lands up to the line of Lake Malheur; if, by reason of any error or fraud, the survey improperly included or omitted any public land, then the obviously proper mode of correction was a bill in equity putting directly in issue the supposed error or fraud. To allow the apparent purpose and legal effect of the patents to be defeated upon proof of error in the plats, does not differ, in principal or practical result, from canceling the patents in a suit at law." The court however affirmed the decision of the State court and in doing so said: "If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the platted meander line, the claim of the owner of the lots to the increment thus occasioned might be conceded to be good, if such were the law of the State in which the lands were situated. But if there never was such a lake—no water forming an actual and visible boundary—on the north end of the lots, it would seem unreasonable, either

to prolong the side lines of the survey indefinitely until a lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake. The jury having found that the facts under this issue were as claimed by the defendant in error, the conclusion must be that the rights of the plaintiff in error
145 must be regarded as existing within the actual lines and distances laid down in the survey and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line of the fractional section."

French-Glenn Live Stock Co. *v.* Springer, 22 Sup. Ct. Rep. 563.

Our conclusion is that the trial court in this case was correct in holding that the boundary line of the plaintiff's lots was the line appearing on the Government plat as a meander line.

Judgments affirmed.

START, *C. J.*

146 (Endorsement:) No. 12912–12913 State of Minnesota, supreme court. Security Land & Exp. Co. appellant *vs.* G. A. Burns *et al.* Henry Weckey *et al.* respondents. 2 cases. Opinion and syllabus. Filed July 11 1902 D. F. Reese clerk. April term, A. D. 1902 Start C. J.

147 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
C. A. BURNS and MARY L. BURNS, Respondents. } No. 94.

Pursuant to an order of court duly made and entered in this cause, on the 22nd day of July A. D. 1902

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the eleventh judicial district, sitting within and for the county of St. Louis be and the same hereby is in all things affirmed. And it is further determined and adjudged that the respondents above named, do have and recover of said Security Land and Exploration Company appellant herein the sum and amount of one hundred twenty-one and 35–100 dollars ($121.25) and costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this 22nd day of July A. D. 1902

By the court,

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees, for making return	
Printer's fees	86.60
Clerk's fees, supreme court	9.50
Filing mandate	
Affidavits and acknowledgments	.25
Postage	
	$121.35

148 [Endorsed:] 12912 State of Minnesota, supreme court. Security Land and Exploration Company appellant *vs.* C. A. Burns, *et al.* respondents Transcript of judgment. Filed July 22 A. D. 1902 D. F. Reese clerk.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of July A. D. 1902.

D. F. REESE, *Clerk.*

149 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant, *vs.* G. A. BURNS and MARY L. BURNS, Respondents.	No. 94. Appeal from District Court, Eleventh Judicial District, County of St. Louis.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1902, upon the return to the appeal herein.

Now after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be and the same hereby is, in all things affirmed and that the respondents above named have judgment accordingly.

Entered July 22nd A. D. 1902.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above entitled cause.

Attest: D. F. REESE, *Clerk.*

150 [Endorsed:] No. 12912. State of Minnesota, supreme court. Copy of order for judgment. Filed July 22 A. D. 1902 D. F. Reese, clerk.

151 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1902.

TUESDAY MORNING, 9:30 O'CLOCK, *May* 6, *A. D.* 1902.

Court convened pursuant to adjournment. All the justices being present.

SECURITY LAND AND EXPLORATION COMPANY, Appellant, *vs.* G. A. BURNS and MARY L. BURNS, Respondents. } Cal No. 94. Reg. No. 12912.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above entitled cause.

Attest: D. F. REESE, *Clerk.*

152 [Endorsed:] 12912. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 22, A. D. 1902. D. F. Reese, clerk.

153 [Endorsed:] No. 12912. State of Minnesota, supreme court. Security Land & Exploration Company, appellant, against C. A. Burns and Mary L. Burns, respondents. Judgment roll. Filed July 22nd, 1902. D. F. Reese, clerk.

154 State of Minnesota, Supreme Court.

STATE OF MINNESOTA, }
Office of Clerk of the Supreme Court, } ss:

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States, that the foregoing and annexed transcript of record is a full and complete transcript of the return of the clerk of the district court on appeal to the Minnesota State supreme court, assignments of error in State of Minnesota supreme court, judgment, judgment roll, stipulation of substitution of attorneys, stipulation as to hearing of cause and opinion of the Minnesota State supreme court, had in the case of Security Land and Exploration Company, appellant and plaintiff in error, against G. A. Burns and Mary L. Burns, respondents and defendants in error, as appears from the original files and records of the supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error and of the stipulation waiving the bond on the writ of error and the assignments of error in the United States Supreme Court as the same remain on file and of record in the said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof, I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 25th day of August, A. D. 1902.

D. F. REESE,
Clerk of the Supreme Court of the State of Minnesota.
By J. L. HELM,
Deputy Clerk.

Endorsed on cover: File No. 18659. Minnesota supreme court. Term No. 127. The Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns. Filed September 5, 1902.